





Kỉ YẾU HỘI THẢO

CONFERENCE PROCEEDINGS

HICAC

HO CHI MINH CITY INTERNATIONAL CONSTRUCTION ARBITRATION CONFERENCE HICAC2024

Construction Contract and International Arbitration: When Legal Traditions Collide

HỘI THẢO TRONG TÀI XÂY DỰNG QUỐC TẾ THÀNH PHỐ HỒ CHÍ MINH 2024

Hợp đồng xây dựng và Trọng tài quốc tế: Khi các truyền thống pháp luật có sự xung đột



Ho Chi Minh City, April 25-26, 2024 Hồ Chí Minh, ngày 25-26 tháng 4 năm 2024



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ORGANIZERS

1. SCLVN

SCLVN is a socio-professional organization, voluntarily established by Vietnamese citizens and organizations operating in the field of construction law

Purpose: support each other to improve knowledge and qualifications, information exchange on construction law, contribute to create the stable and sustainable environment for construction activities in Vietnam and the country's socio-economic development.

SCLVN is operating under the administrative management of the Ministry of Home Affairs, the sector management of the Ministry of Construction and other related Ministries and government agencies on the activities of the Society in accordance with laws and regulations.

Organizational members: Vietnamese organizations established in accordance with Vietnamese law, operating in the field of construction and construction law.



HỘI PHÁP LUẬT XÂY DỰNG VIỆT NAM

2. VIAC

Vietnam International Arbitration Center (in Vietnamese: Trung tâm Trọng tài Quốc tế Việt Nam, abbreviation: VIAC) was established under Decision No. 204/TTg dated 22 April 1993 of the Prime Minister of the Socialist Republic of Vietnam on basis of the merger of the Foreign Trade Arbitration Council (established in 1963) and the Maritime Arbitration Council (established in 1964). The Arbitral Awards rendered by Arbitral Tribunals at VIAC are final and enforceable within Vietnam and in over 170 countries and territories that are State members of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention 1958).

As the leading Vietnamese arbitration & mediation institution with international credibility and, VIAC has administered thousands of domestic and international disputes in various fields of commerce, such as sale of goods, logistics, insurance, construction, finance and banking, joint venture projects, energy, infrastructure, etc. with involvement of businesses coming from almost all provinces in Vietnam. VIAC is also the only arbitration institution in Vietnam known to handle international disputes with participation of disputing parties from many countries and territories that are important trade and investment partners of Vietnam. Throughout three decades of its operation, VIAC has been spreading its wing as a reputable international mediation and arbitration institution in Vietnam, gaining trust and becoming the destination for both domestic and international business communities.



3. FACULTY OF INTERNATIONAL LAW- HCM ULAW

The University of Law in Ho Chi Minh City (HCM ULAW) is a prominent public university in Vietnam that specializes in training legal professionals at both the undergraduate and postgraduate levels. In addition to providing high-quality personnel, the university is also a hub for scientific research in legal science, making significant contributions to the country's construction, development, and integration into the global community. Furthermore, HCM ULAW is a modern, multidisciplinary institution that actively engages in resolving significant scientific challenges, particularly in the field of legal science. With a broad range of international partnerships, it serves as a reliable cornerstone for relationships with other educational institutions throughout Vietnam.

Faculty of International Law is a Faculty of specialized training in International Law serving human resources of society in the context of international economic integration. Faculty of International Law has 3 departments: Department of International Public Law; Department of International Justice - Comparative Law and Department of International Trade.





HICAC



Key Speaker
Christopher Seppälä



Moderator
Assoc. Prof., Dr.
Tran Viet Dzung



Speaker
Prof.Douglas Jones



Speaker

Datuk Sundra Rajoo



Moderator/ Speaker
Vu Anh Duong



Speaker Gloria Lim



Speaker
Jehad Abdulrazzaq Kazim



Speaker **Tejus Chauhan**



Speaker Steve Kim



Moderator
Trinh Nguyen



Speaker

Nguyen Cong Phu



Speaker

Akshay Kishore



Speaker
Pardeep Singh Khosa



Speaker Andrew Heng



Moderator
Vu Thi Thinh



Speaker
Prof. Do Van Dai



Speaker Assoc. Prof. Nguyen Minh Hang



Speaker
Antoine Logeay



Speaker **Kelvin Aw**



Moderator
Ngo Thanh Tung



Speaker Charis Tan



Speaker
Assoc. Prof.
Duong Anh Son



Moderator/ Speaker

Nguyen Manh Dzung



Speaker Do Khoi Nguyen



HICAC



Speaker Đao Nhu Ngoc Linh



Speaker
Joel Quek



Moderator Hung Le



Speaker
Samuel Widdowson



Speaker
Zheng Bao Qiang



Speaker Le Quang Tam



Moderator
Peter Scott Caldwell



Speaker
Sezgin Ozbilgin



Speaker

Amit Garg



Speaker
Prateek Jain



Speaker **Lynda Lim**



Moderator
Nguyen Thi Lan Huong



Speaker

Dr.Le Nguyen Gia Thien



Speaker

Sanghoon Han



Speaker

Duong Hoang



Speaker
Amanda Lees



Moderator

Dr. Nguyen Thi Hoa



Speaker
Kim Rosenberg



Speaker

Janice Cheng



Speaker
Dr. Nguyen Thi
Thu Trang

















SIDE EVENT

MORNING

09:30-11:30 YSIAC Vietnam - Arbitrator Selection And Challenge In Construction Arbitration

Venue: Burgundy – Level M2- Novotel Centre Hotel – 167 Hai Ba Trung Street, District 3, HCMC

AFTERNOON

14:00-17:00 ASEAN Construction And ADR Roundtable,

Session Hosted By L2 I-CON International (Malaysia)

In Conjunction And In Support Of HICAC2024.

Venue: Executive Room – Rex Hotel – 141 Nguyen Hue Boulevard, District 1, HCMC

19:00-22:00 Welcome Reception For Speakers, Sponsors, And Invited Guests (Invitation Only)

Venue: iSTEAKS - 99 Nguyen Hue Boulevard, District 1, HCMC

25 04

GENERAL SESSION (BALLROOM)

08:00-12:00

• 08:00 - 08:30

Opening speeches

8:30 - 10:00

Panel 1

Confidentiality and Transparency in International Construction Arbitration: Views from regional institutions



Moderator/ Speaker
Vu Anh Duong
Permanent Vice President
cum Secretary General of
Vietnam International
Arbitration Centre (VIAC)



Speaker

Cloria Lim

Chief Executive Officer at Singapore International Arbitration Centre



Speaker

Jehad Abdulrazzaq Kazim

Executive Director at Dubai International
Arbitration Centre



Tejus Chauhan
Director, South Asia, Arbitration & ADR
ICC International Court of Arbitration



Speaker
Steve Kim
Secretary General
at KCAB INTERNATIONAL

• 10:00-10:20

Break

• 10:20 - 11:30

Panel 2

Conflicts of civil law & common law in construction contracts: Stories from international arbitrators



Assoc. Prof., Dr.
Tran Viet Dzung
Vice Rector of
Ho Chi Minh City University



Speaker
Prof.Douglas Jones
Independent International Arbitrator



Speaker
Datuk Sundra Rajoo
President of the Asian Institute of Alternative
Dispute Resolution (AIADR)

• 11:30 - 12:00





Key Speaker
Christopher Seppälä
International Arbitrator

11:30 - 12:00

Lunch







Confidentiality and Transparency in International Construction Arbitration: Views from Regional Institutions

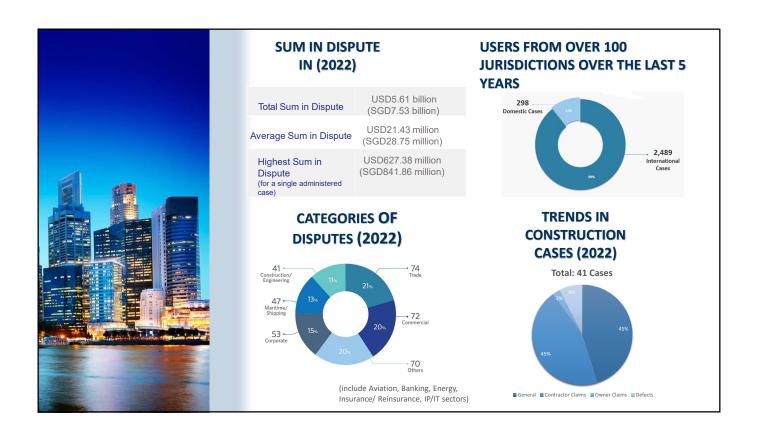
Presentation by Gloria Lim, CEO, Singapore International Arbitration Centre



Gloria Lim CEO, SIAC





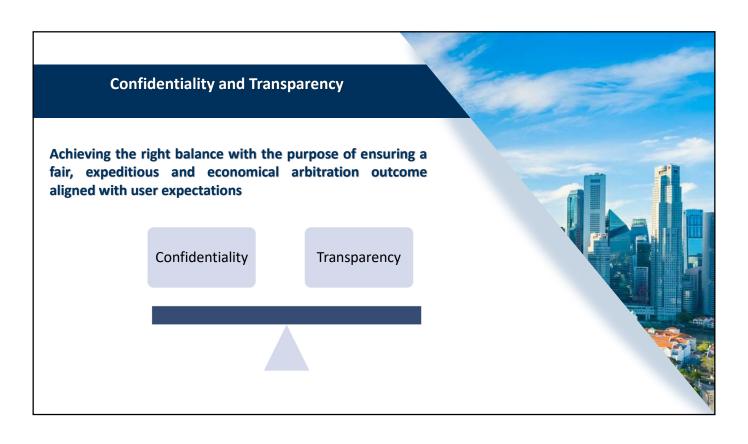






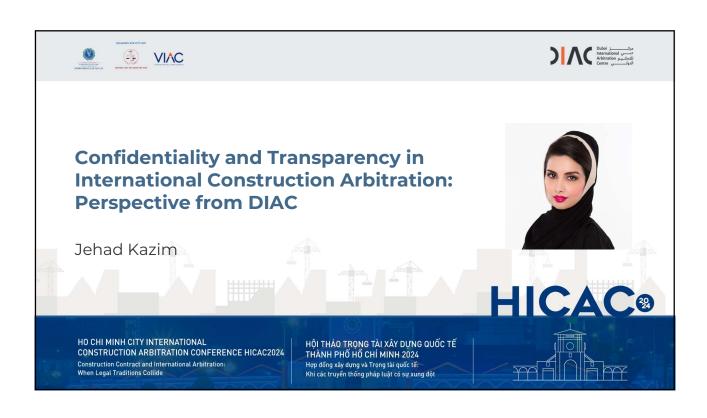


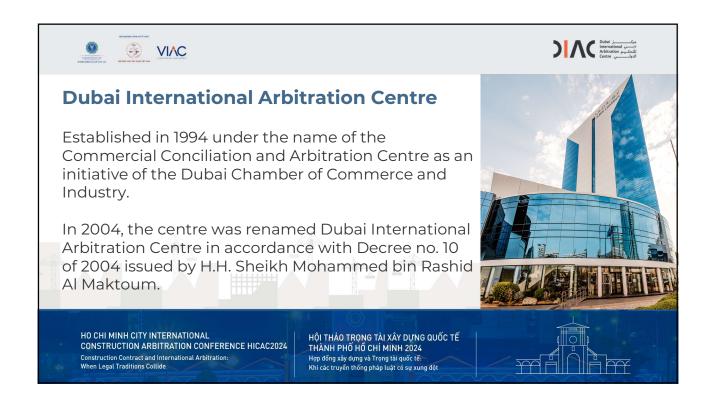






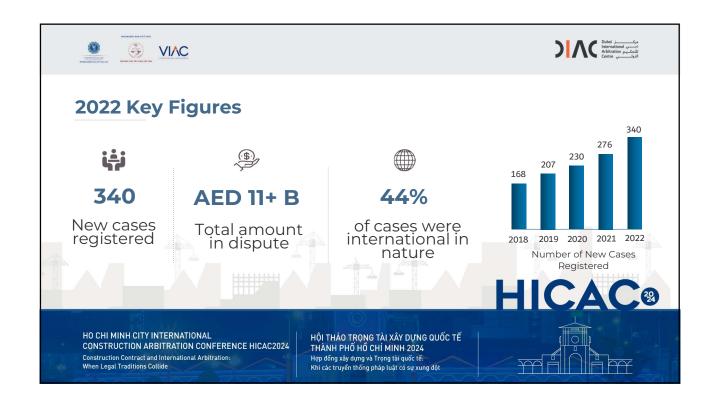






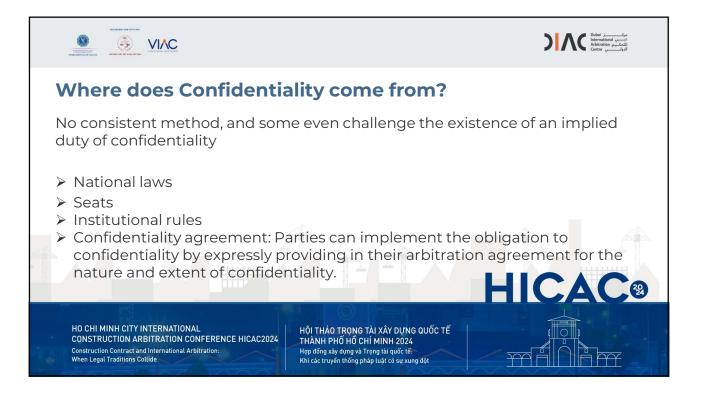






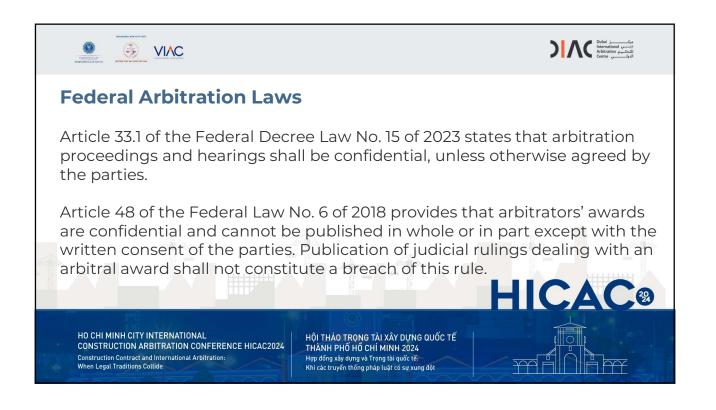




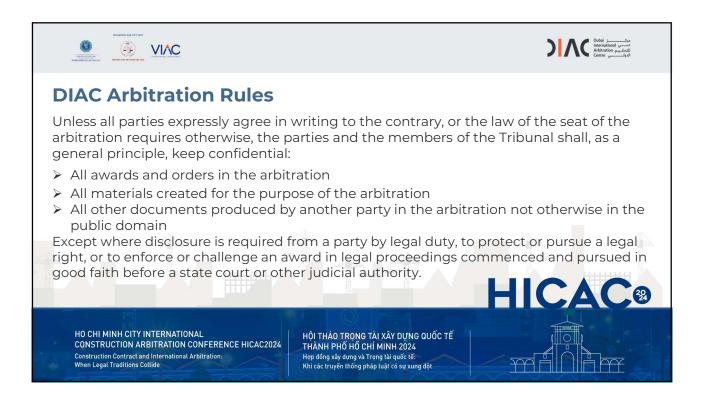






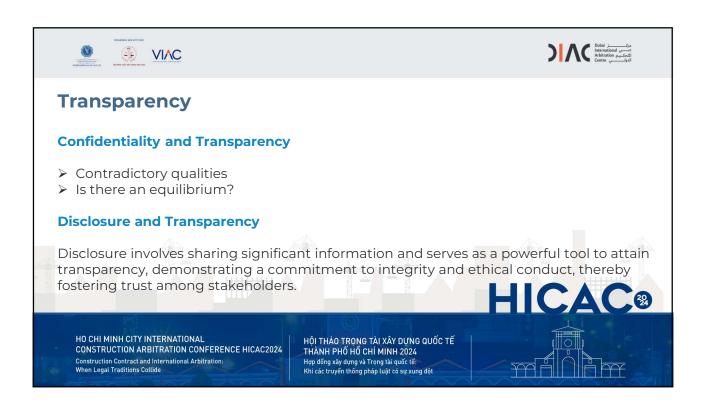


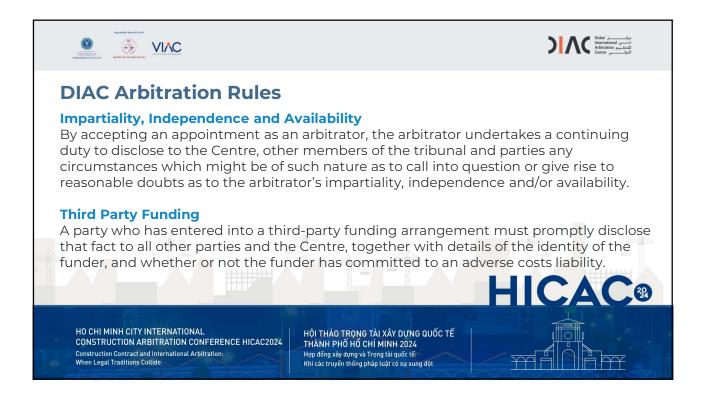






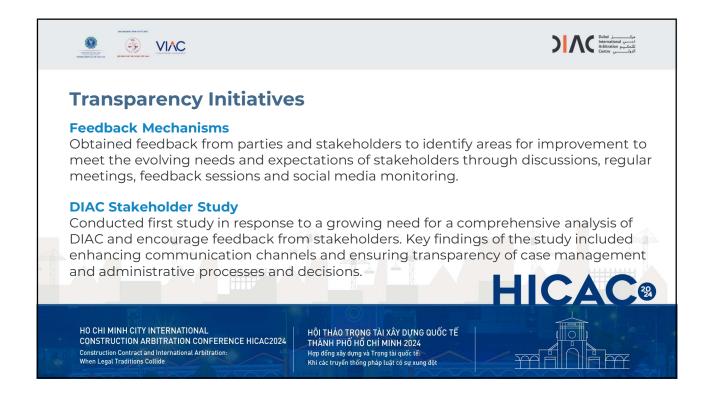




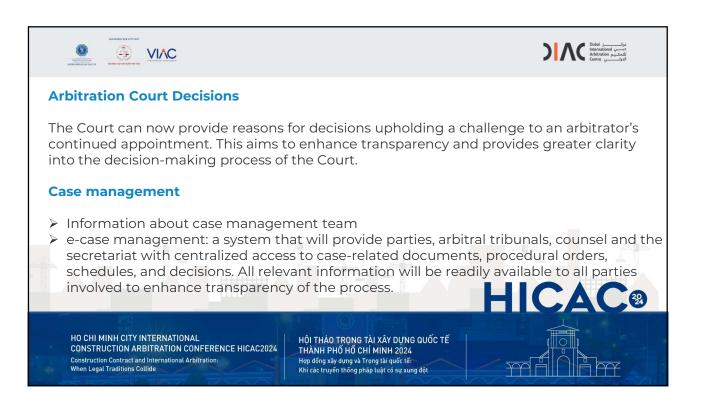






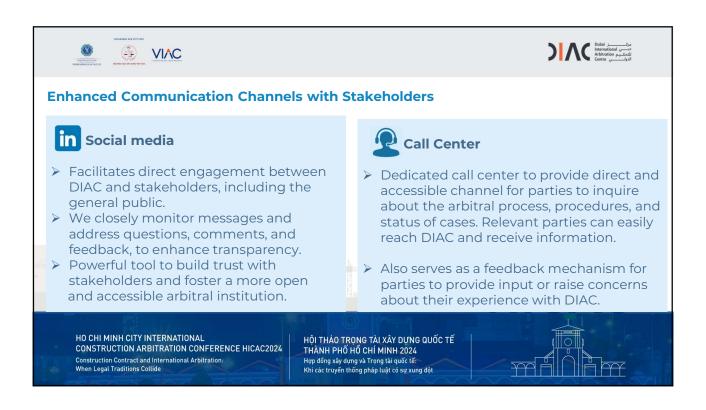






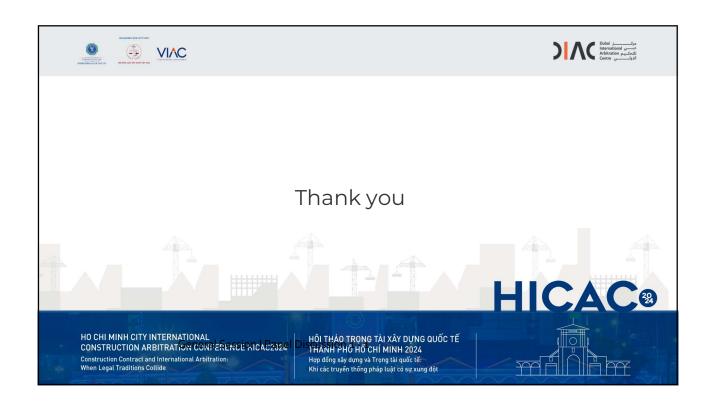










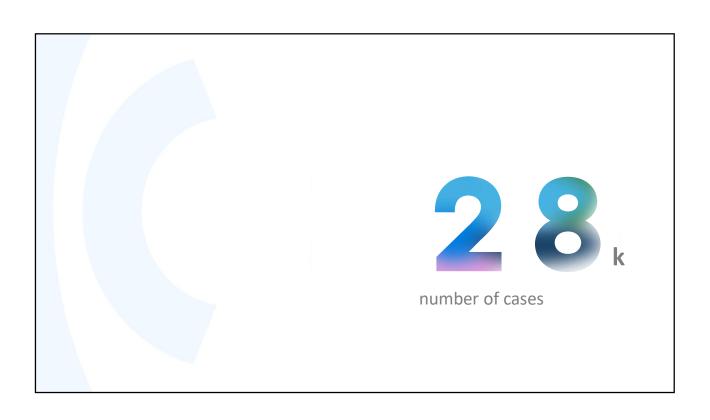
















Confidentiality and Transparency

according to the ICC Rules and Practices

1. Note on the Conduct of the Arbitration

2. Predictable costs

3. Constitution of arbitral tribunals

4. Confidentiality in the conduct of the arbitration

5. ICC scrutiny process

6. Fees reduction

7. Communication of reasons for the Court's decisions

8. Other initiatives

Note on the

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Arbitration

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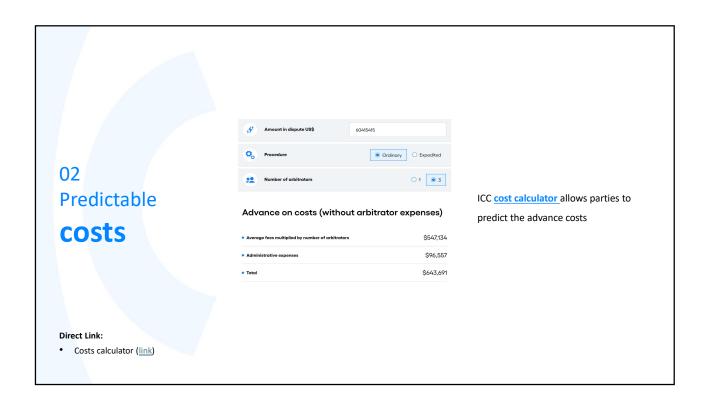
1 January 2021

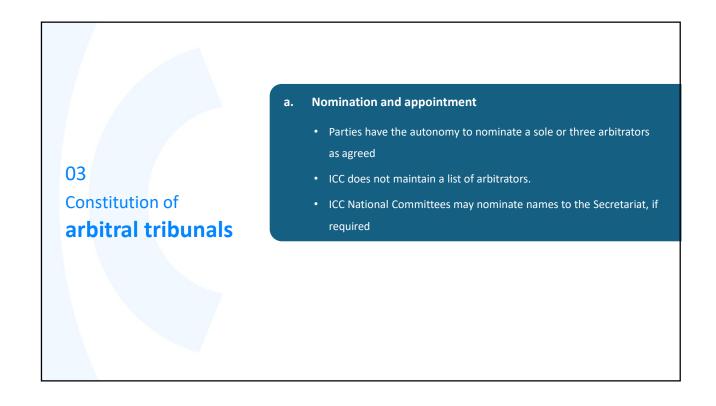
... intended to provide parties and AT with practical guidance concerning the conduct of arbitrations under the 2021 ICC Rules of Arbitration ("Rules") as well as the practices of the ICC Court and applicable procedural timeline thereto.

Direct link:

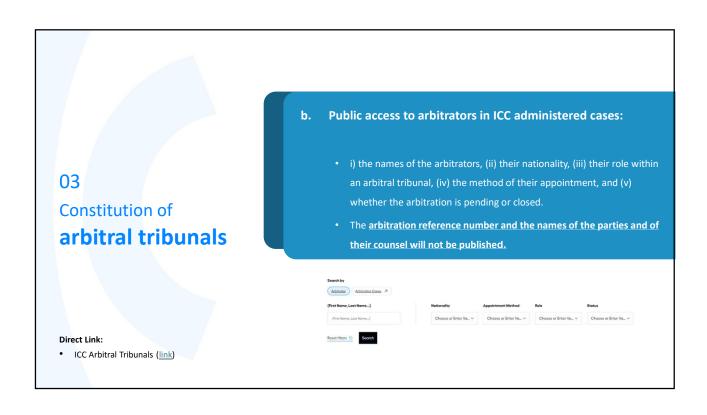
 Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration (download)

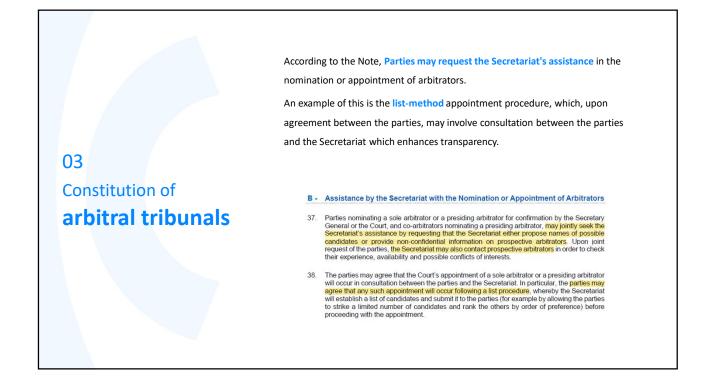














03
Constitution of arbitral tribunals

The Note on AT - Statement of Acceptance, Availability, Impartiality and Independence:

"In assessing whether a disclosure should be made, an arbitrator or prospective arbitrator should consider relationships with non-parties having interest in the outcome of the arbitration, such as third-party funders as well as relationships with other members of the arbitral tribunal, as well as experts or witnesses in the case."

O4
Confidentiality
in the conduct of the arbitration

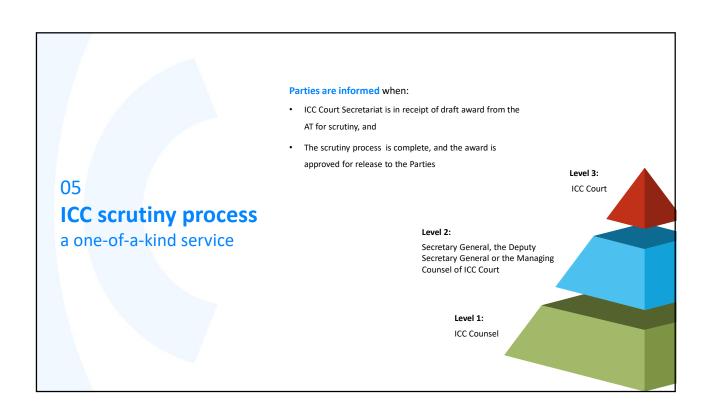
Article 22 (3) of the ICC Rules:

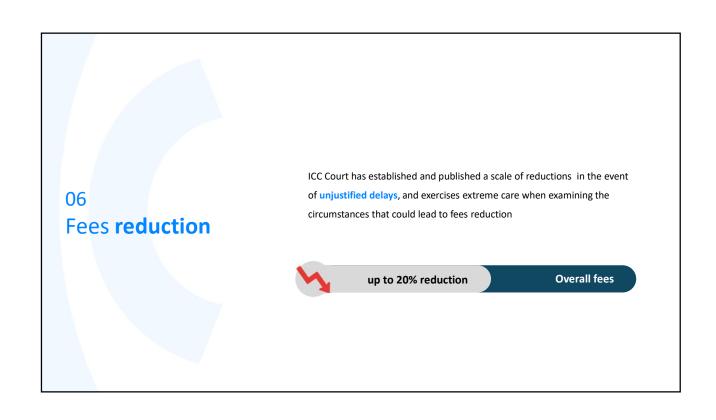
"Upon the request of any party, the arbitral tribunal may make orders concerning the confidentiality of the arbitration proceedings or of any other matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information."

Appendix I – Article 8 of the ICC Rules:

"The work of the Court is of a confidential nature which must be respected by everyone who participates in that work in whatever capacity..."









07 Communication of reasons for the Court's Decisions

IV - Transparency

the Arbitration:

A - Communication of Reasons for the Court's Decisions

46. Pursuant to Article 5 of Appendix II, upon request of any party, the Court will communicate the reasons for a decision on (i) prima facie jurisdiction (Article 6(4)); (ii) consolidation (Article 10); (iii) Article 12(8); (iv) Article 12(9); (v) the challenge of an arbitrator pursuant to Article 14; (vi) whether to replace an arbitrator pursuant to Article 15(2).

Section IV of the Note to Parties and Arbitral Tribunals on the Conduct of

- 47. In exceptional circumstances, however, the Court may decide not to communicate the reasons for any of these decisions.
- For arbitrations conducted under the Rules in effect prior to the entry into force of the 2017 Rules, a request for communication of reasons must be made by all parties.
- 49. Any request for the communication of reasons must be made in advance of the decision in respect of which reasons are sought. Such request may be made when the Secretariat invites parties to comment ahead of the Court's decision.

Direct Link:

• ICC Commission Report (<u>link</u>)

08 Other **initiatives**



- ICC x Jus Mundi Partnership: Latest ICC Arbitral

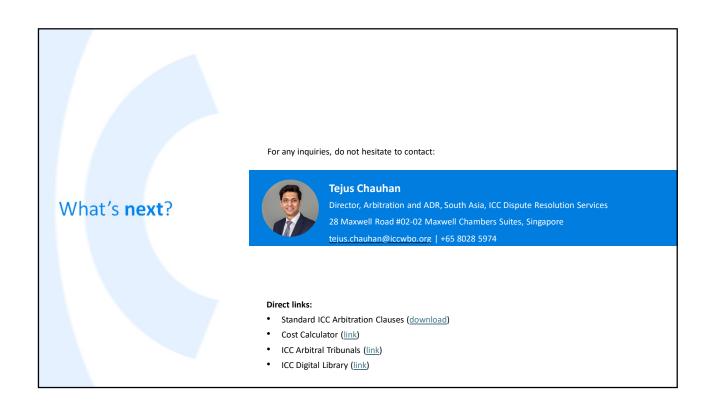
 Awards launched on 1st April 2021 (publication
 is by consent of Parties, redacted and only
 published after a certain cooling period)
- Under the ICC x Jus Mundi partnership, a total of 42 awards (partial and final/dissenting opinions/addendum of awards) have been published.
- Other resources are published ICC DRS Digital

 Library which is accessible through Jus Mundi.

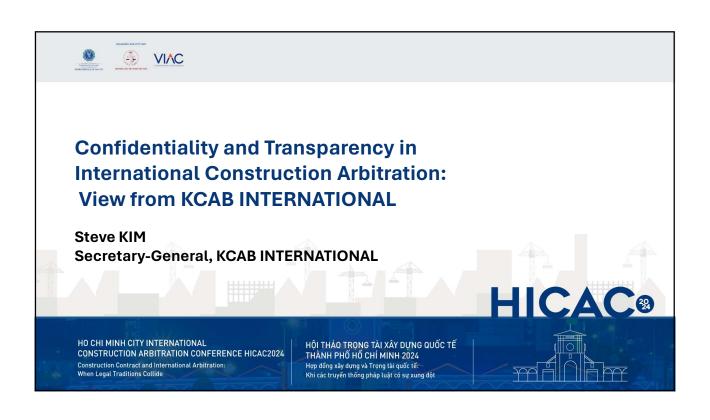
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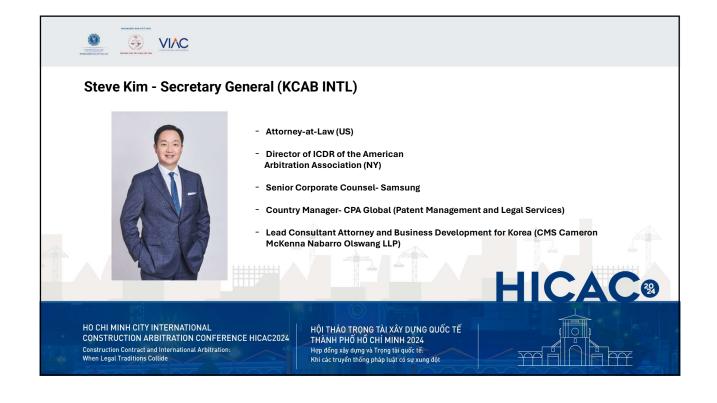
• ICC DRS Digital Library – Jus Mundi (<u>link</u>)



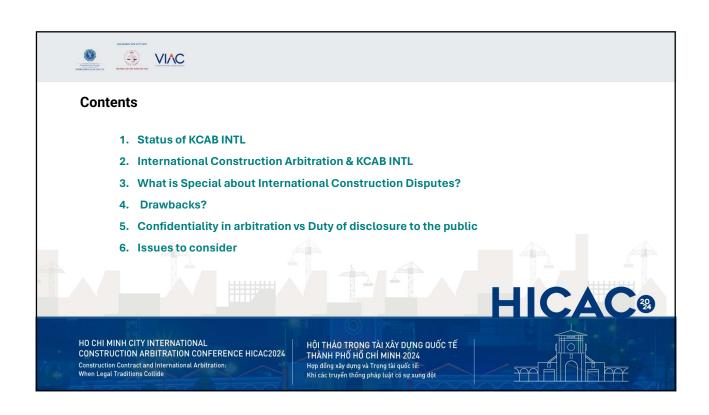


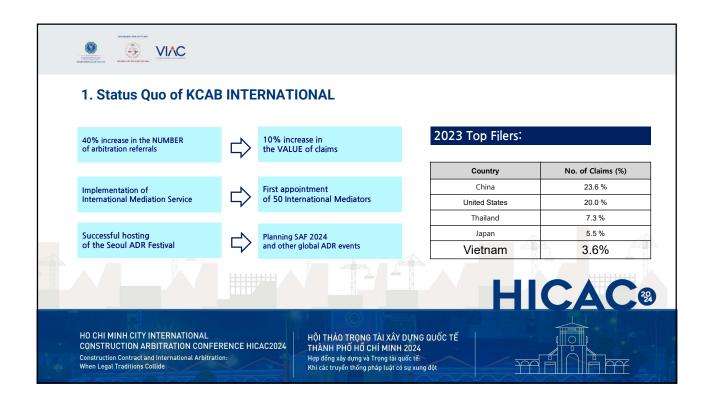




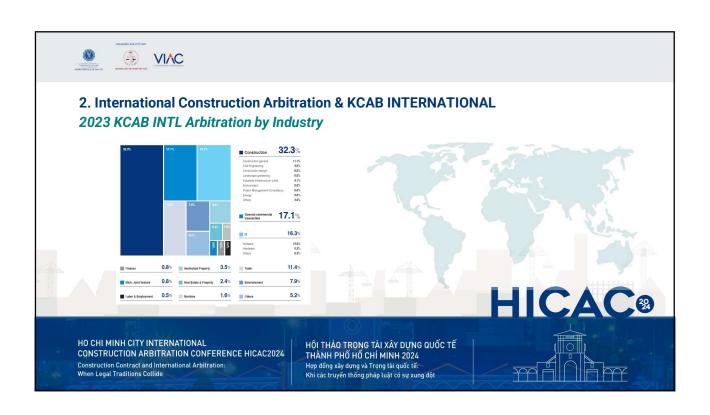


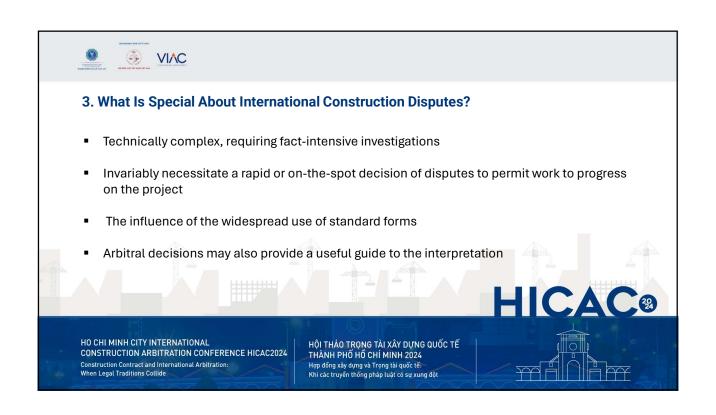






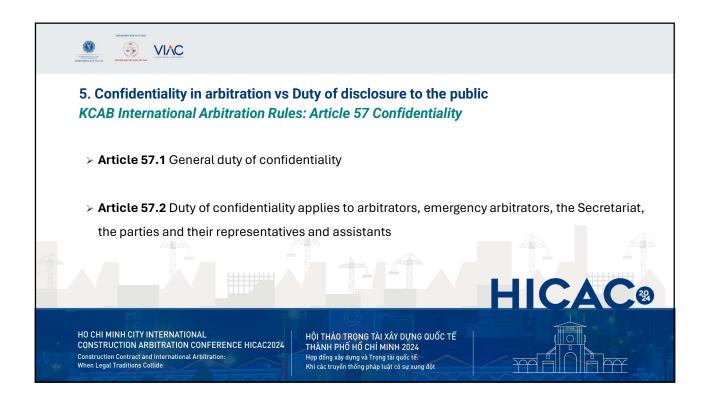




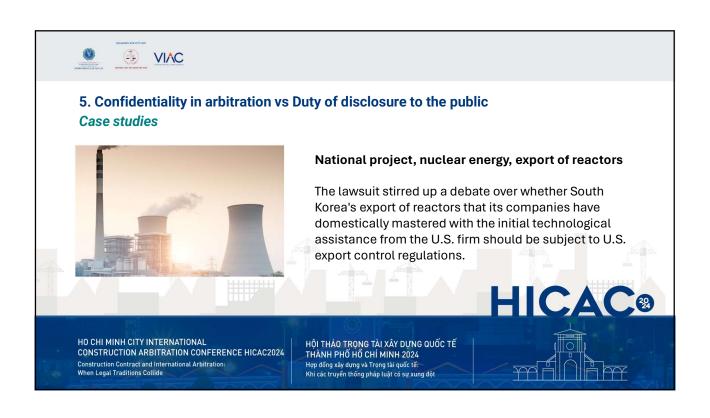


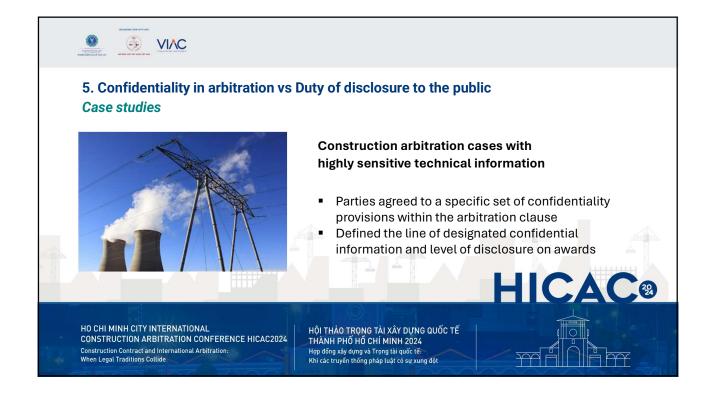




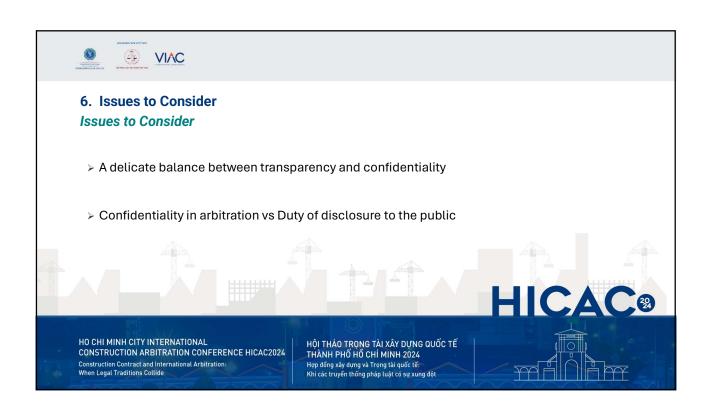


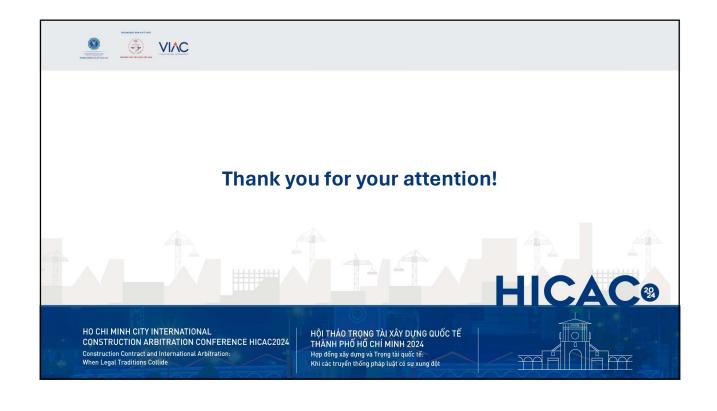




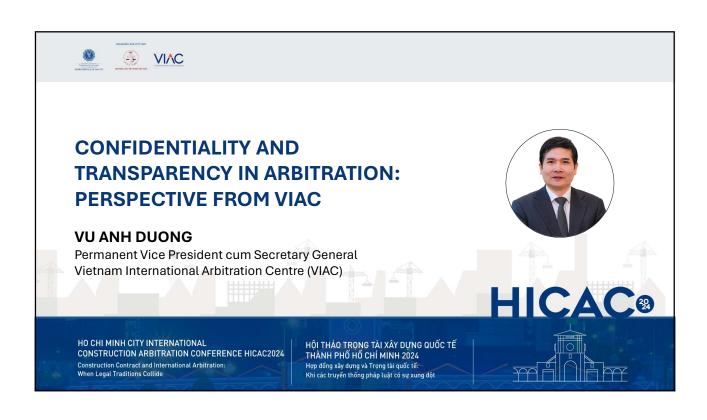






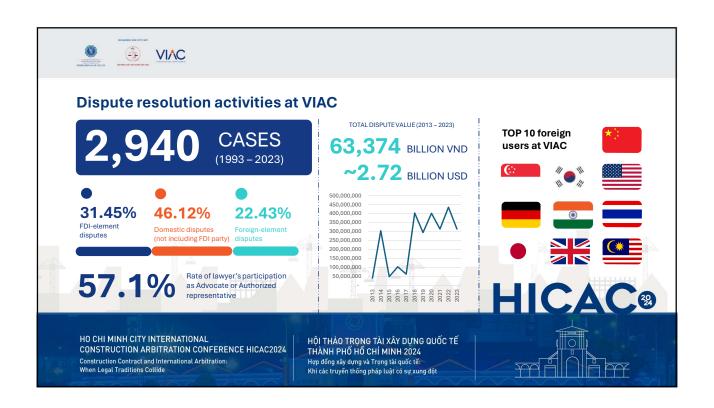


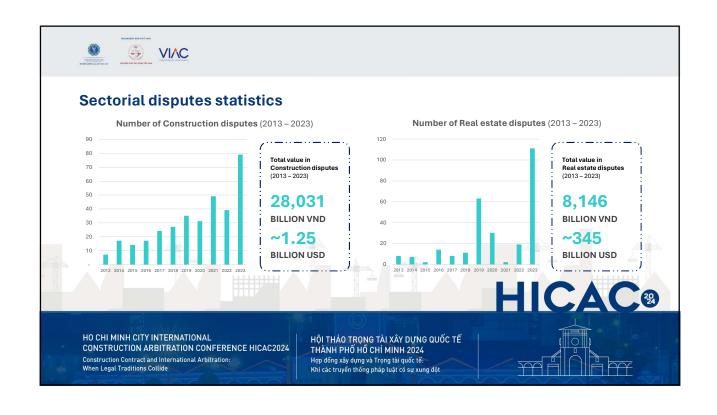






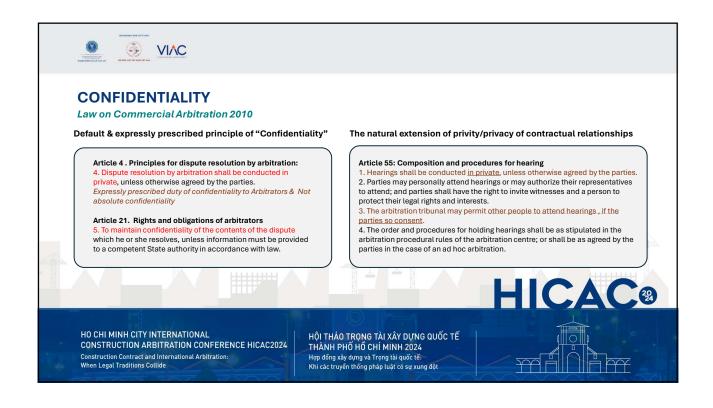






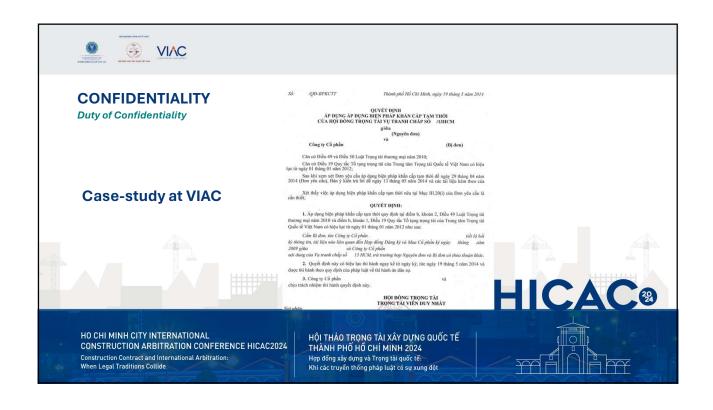




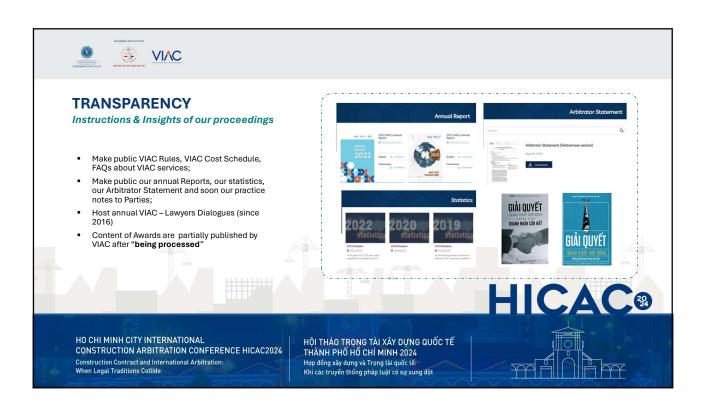


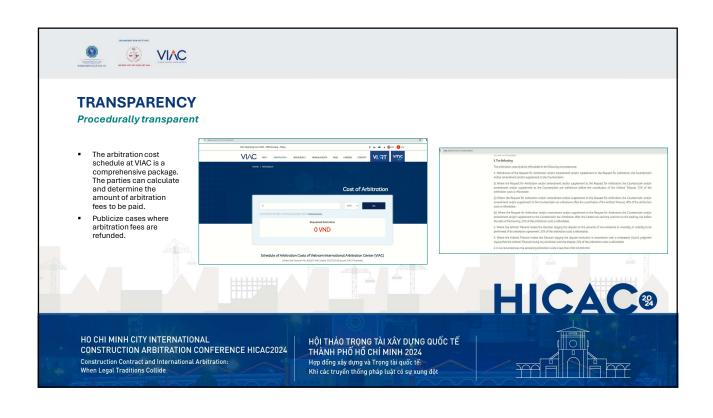




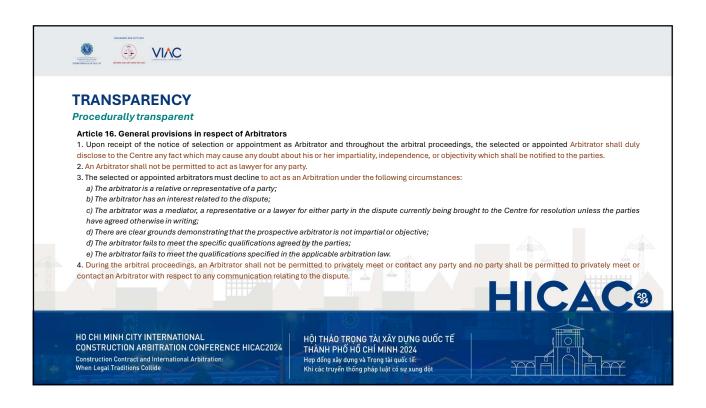








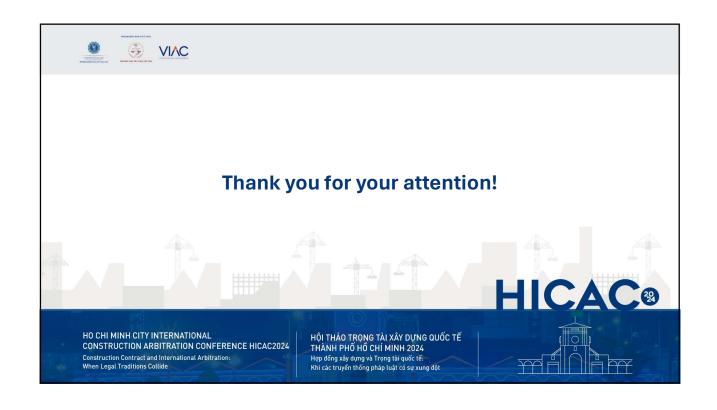
















Overview

PART 1: Substantive Legal Differences between Civil and Common Law Jurisdictions

- i) Contractual Interpretation
- ii) The Role of Good Faith
- iii) Change of Circumstances

PART 2: Procedural Differences influencing Arbitration Approaches

- i) Proactivity of Tribunals
- ii) Disclosure of Documents
- iii) Length of Hearings
- iv) Expert Evidence (Tribunal or Party Appointed)





PART 1 (i): Common Law Interpretation

Guiding Questions

- How does the Common Law interpret contracts?
- What scope is there to consider circumstances prior or after the contract is concluded?



Overarching Philosophy

- The wording of the contract is of primary importance
 - An objective exercise in "the ascertainment of the meaning which the document would convey to a reasonable person"
 - (Lord Hoffman's influential judgement in Bromwich Building Society [1988] WLR 896, 912-3)
- Surrounding Circumstances can only be considered in exceptional circumstances
 - "The general rule is that extrinsic evidence is not admissible for the construction of a written contract" (Lord Wilberforce in L Schuler AG v Wickman machine Tool Sales Ltd [1974] AC 235, 261)
 - Finality and certainty of the written word is paramount

3

'Ambiguity Gateway' and Surrounding Circumstances

- Surrounding Circumstances prior to contract formation can only be considered if ambiguity of the written word can be established
- Surrounding circumstances after contract formation cannot generally be considered
- Some difference of view within the Common Law on the ambiguity exception

Bromwich Building Society [1988], 913

Surrounding circumstances that are OBJECTIVELY KNOWN to the parties can resolve situations were the language is susceptible of more than one meaning



Codelfa Construction v State Rail Authority (1982) 149 CLR 337, 348-352

Australia may have a slightly more formalist approach than English Courts

Interpretation

Ambiguity and Surrounding Circumstances

Commercial Common Sense



Commercial Common Sense

- No exact uniformity in jurisprudence across Common Law World
- Some limited scope for applying commercial common sense if semantic analysis "flouts business commonsense" (*The Antaios*)
- However, recent cases probably signify a return to the primacy of literal language
- Grove Developments v Balfour Betty [2016] EWCA Civ 990 —courts cannot "use the canons of construction to rescue one party from the consequences of what that party has clearly agreed. There is no ambiguity in the present case which enables the court to reinterpret the parties' contract in accordance with "commercial common sense""



Common Law Interpretation

Ambiguity and Surrounding Circumstances

Commercial Common Sense

5

Interpretation: Civil Law Approach

Overarching Philosophy (French Code Civil as Paradigmatic)

Underlying principle is to enforce subjective intentions of the parties

Example: Haakjoringskod Case (RG, 08.06.1920 – II 549/19)

German Court held that if a buyer and seller both used the term haakjoringskod to refer to whale meat when it actually means shark meat, the contract should properly be interpreted as being for the sale of whale meat Ordonnance nº 2016-131 of 10 February 2016, Article 1188:

"A contract is to be interpreted according to the common intention of the parties rather than merely accepting the literal meaning of its terms.

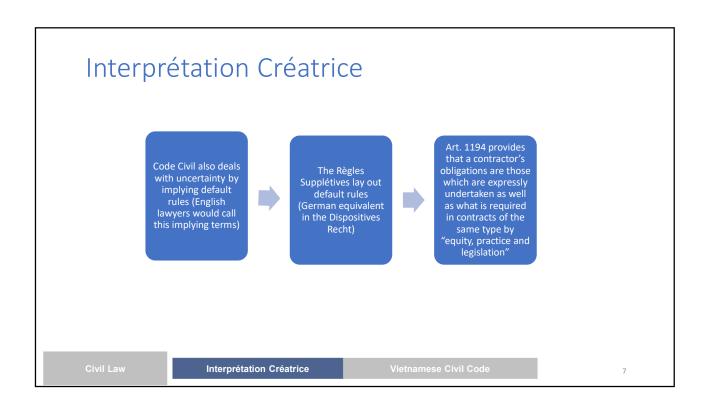
Where this intention cannot be discerned, a contract is to be interpreted in the sense which a reasonable person placed in the same situation would give to it."

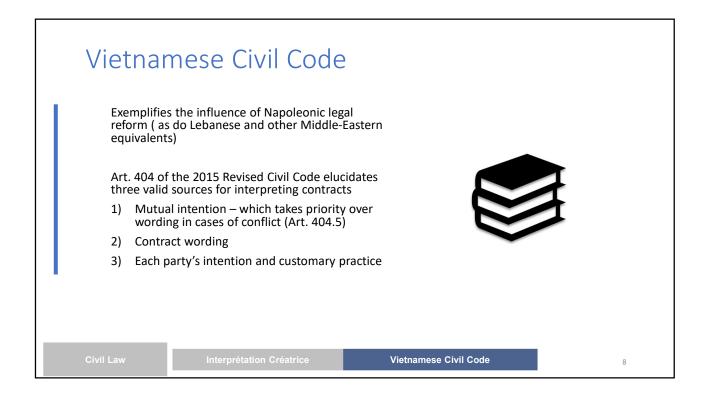
Civil Law

Interprétation Créatrice

Vietnamese Civil Code









Summary

- In the Civil Law, the search for an arbitrator seeking to establish the common intention of the parties can involve the consideration of surrounding circumstances before and after the formation of the contract, recognising that the wording of the contract is important evidence of the parties' intention.
- ❖ An arbitrator's role in the Common Law is quite different.
- There are a lot more facts to consider in contract interpretation in a Civil Law arbitration

9

PART 1 (ii) - Good Faith

Some Key Issues:

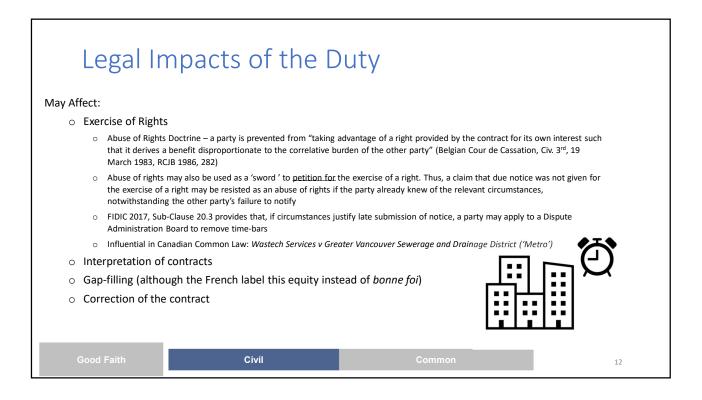
- 1) No homogeneity, even between civil jurisdictions so should be applied very carefully.
- 2) Does a good faith clause restate, expand, or reduce an obligation arising from the applicable law?
- 3) Double-edged sword:
 - ➤ The flexibility of the principle poses the risk of awards being perceived as arbitrary, subjective, or sloppy.



Good Faith Civil Common 10



Good Faith Across Civil Jurisdictions Incumbent on a person negotiating or performing an Flexible Principle Swiss Civil Code Article 2 agreement 1. Every person must act in Refers to a standard of good faith in the exercise of behaviour that will vary in French Civil Code Art. 1104: his or her rights and in the degree based on the 'Contracts must be performance of his or her circumstances negotiated, formed and obligations. performed in good faith' Cour de Cassation in Canal de 2. The manifest abuse of a Craponne (1876) rejected applying the théorie d' right is not protected by law. imprévision 11





Common Law

- Refuses to imply a general duty to negotiate and/or perform a contract in good faith
- Royal Botanic Gardens & Domain Trust v South Sydney City Council
 - No implied duty to make rent determinations in good faith



Where does Anglo-Australian Common Law ensure a minimal level of fair dealing?

- Unconscionable conduct
- Undue influence
- Rectification where a party acts in bad faith to acquiesce in a unilateral mistake
- Duties to disclose
- Promissory estoppel
- Fiduciary duties
- Requirement of coming with 'clean hands' in equity
- Liquidated damages and penalty clauses
- Controversial implication of duty to cooperate: Secured Income Real Estate (Aust) Ltd v St Martins Investments Pty Ltd (1979) 144 CLR 597.

Good Faith Civil Common 13

Two Recent Developments in the Commercial Sphere

Relational Contracts

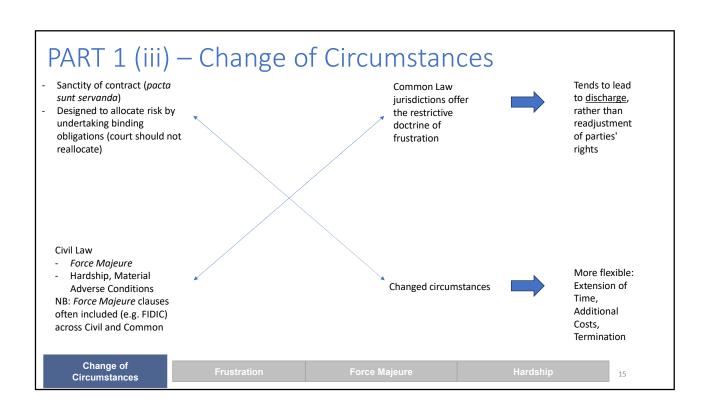
- Yam Seng Pte Ltd v International Trade Corp Ltd (2013)
- Good faith might be relevant to so-called relational contracts (per paragraph 142).
- Can be implied in fact where necessary to give business efficacy because a contract by its nature requires "a high degree of mutual trust and confidence [and] involve[s] expectations of loyalty".
- Subject of active debate in England.
 - 'Relational contracts' arguments are typically run in parallel with submissions that a term should be implied in fact.
 - Distinction between relational and non-relational contracts is unsatisfactorily blurry.

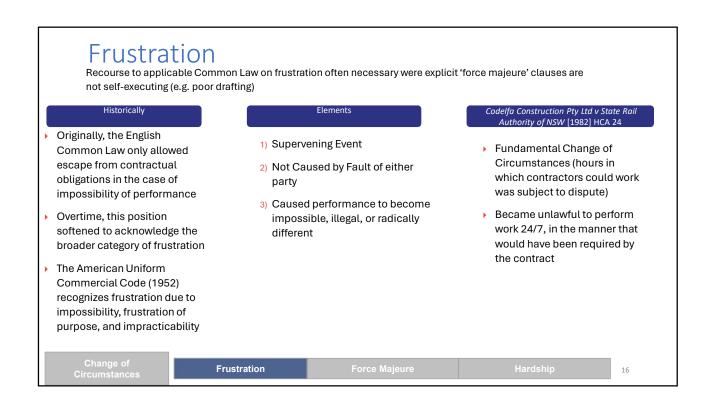
Criteria for Exercise of Contractual Discretion

- 2015 and 2008 respectively.
- Asked whether there could be an implied term to prevent arbitrary exercising of contractual discretion.
- Both judgements evince a concern with avoiding "arbitrariness" and "capriciousness".
- Multiplex (2019) looked at this principle in the construction context.
- Contractor was justified in suspending building works as a response to the employer's breach.
- Validity of contractor's response was subject to the Braganza/Socimer criteria of rationality, absence of caprice, arbitrariness or perversity, none of which it infringed.

Good Faith Civil Common 14









Force Majeure

Article 1218 of the French Civil Code: "an event <u>beyond the control</u> of the debtor, which could not reasonably have been foreseen at the time of conclusion of the contract and the effects of which cannot be avoided by appropriate <u>measures</u>, prevents performance of the obligation by the debtor."



Influence of the doctrine in contractual clauses:

- Enumeration of conditions that constitute force majeure is common in construction
- Derogating force majeure by drafting into contract gives more certainty to commercial parties

E.g. "FIDIC"

- Red, Yellow, and Silver Books all include force majeure provisions at Clause 19

Change of Circumstances

Frustratio

Force Majeure

Hardship

17

Force Majeure

Force Majeure provisions Vietnamese Civil Code

- Article 156.1 of the Civil Code defines: "An event of force majeure is an event which occurs in an objective manner which is not able to be foreseen and which is not able to be remedied by all possible necessary and capable measures being taken."
- Article 351.2 of the Civil Code sets out the consequences of a force majeure event: "Where an obligor fails to correctly perform an obligation due to an event of force majeure, it shall not have civil liability, unless otherwise agreed or otherwise provided by law."



Circumstances

Frustration

Force Majeure

Hardship



Material Adverse Conditions | Hardship | Imprévision – Alternative Relief Granted in Civil Jurisdictions

Enlivened when change makes performance "excessively onerous" (c.f. force majeure)



Imprévision: French Civil Code Art. 1195 (as of October 1, 2016) "If a change of circumstances that were unforeseeable at the time of the conclusion of the contract renders performance excessively onerous for a party that had not accepted the risk of such a change, that party may ask the other contracting party to renegotiate the contract. The affected party must continue to perform its obligations during the period of renegotiation..."

- Intermediary path: facilitates keeping contract afoot
- Collaboration incentivised
- Preventative Role parties more likely to compromise before Court than sue to terminate
- Only if no agreement reached, Court may, at request of a party, revise or terminate
- Churchill Falls v. Hydro-Quebec, (2018) SCC

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Material Adverse Conditions | Hardship | Imprévision – Alternative Relief Granted in Civil Jurisdictions

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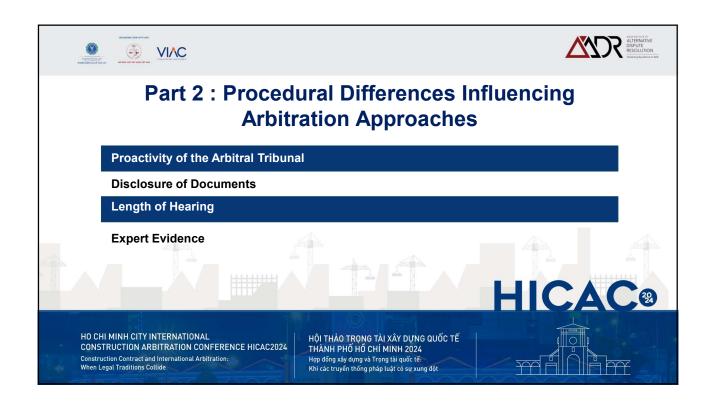


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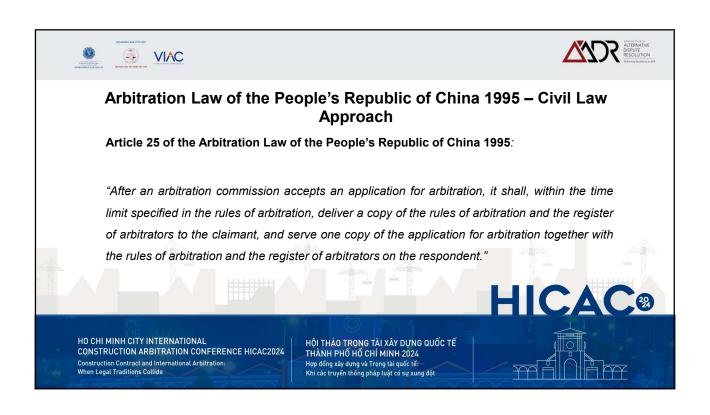


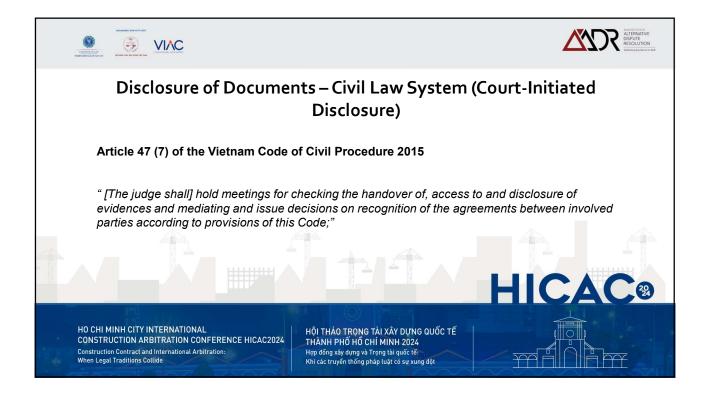




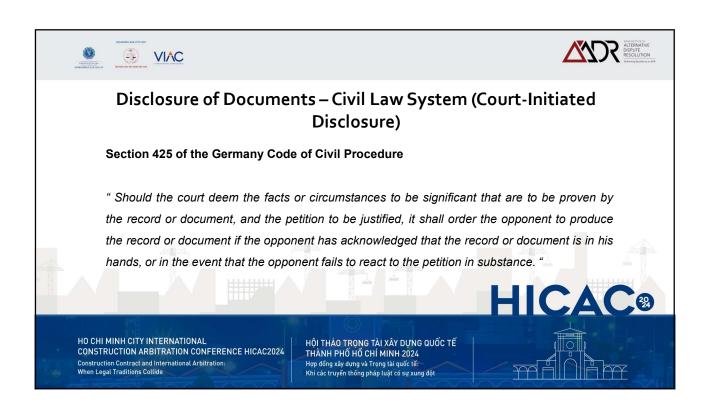


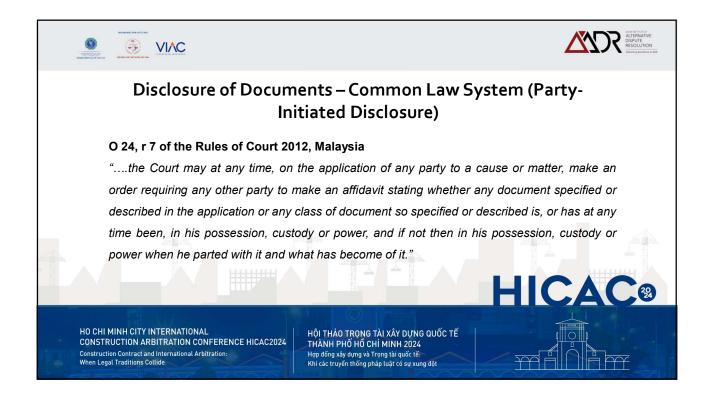




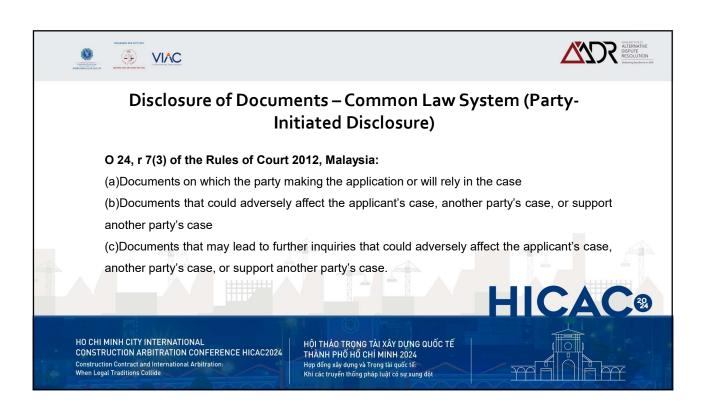


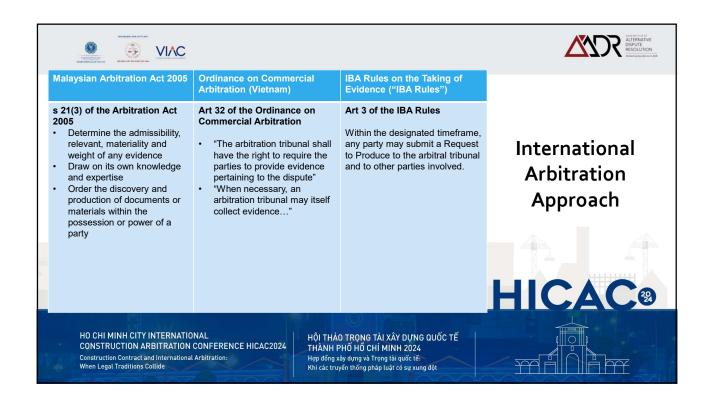




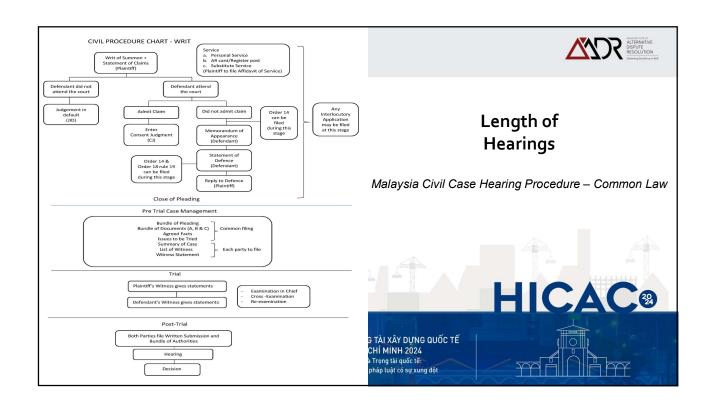


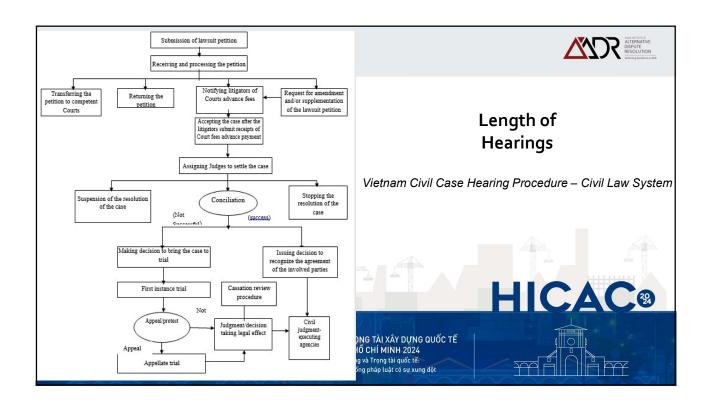




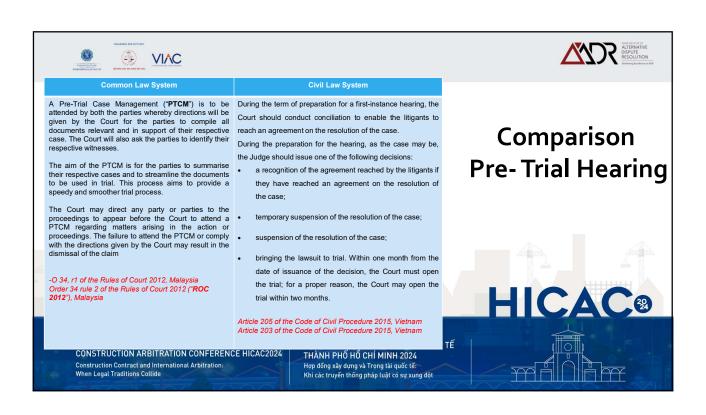


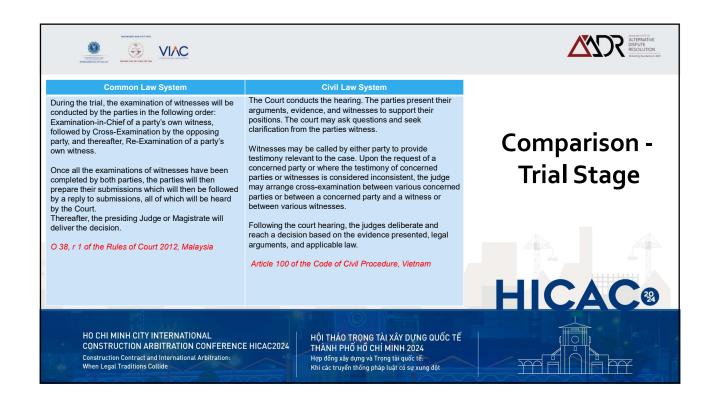










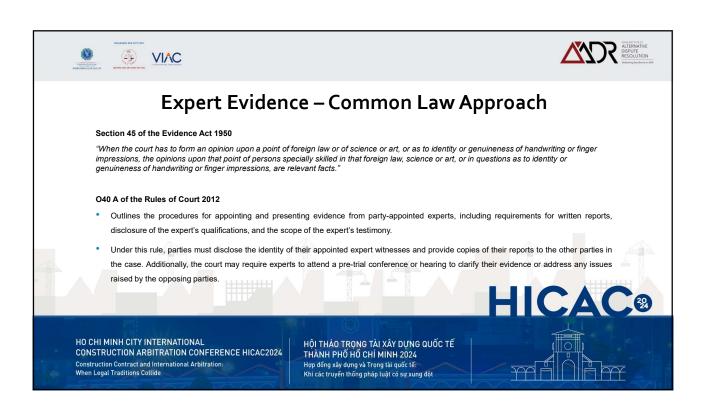








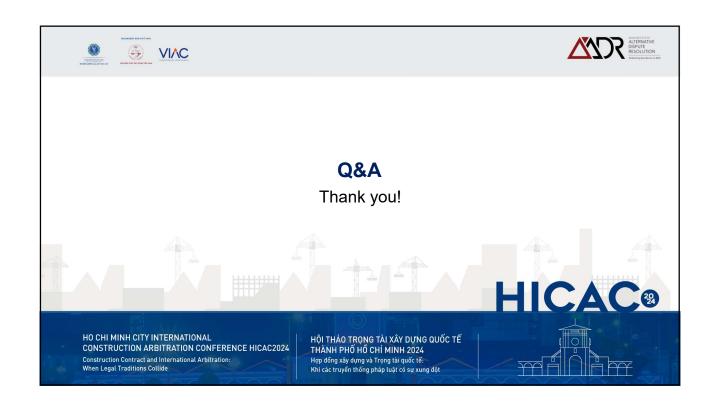










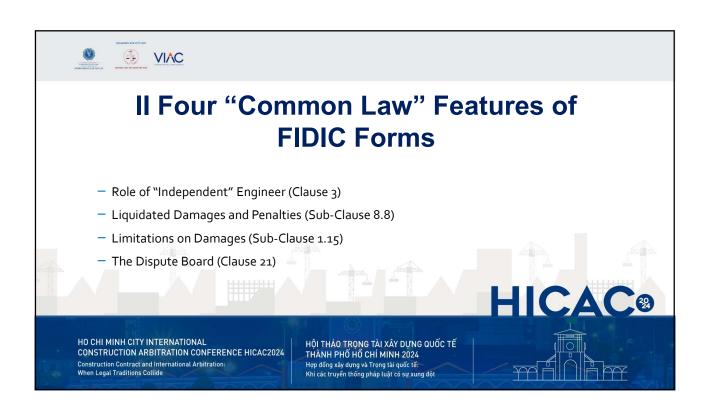














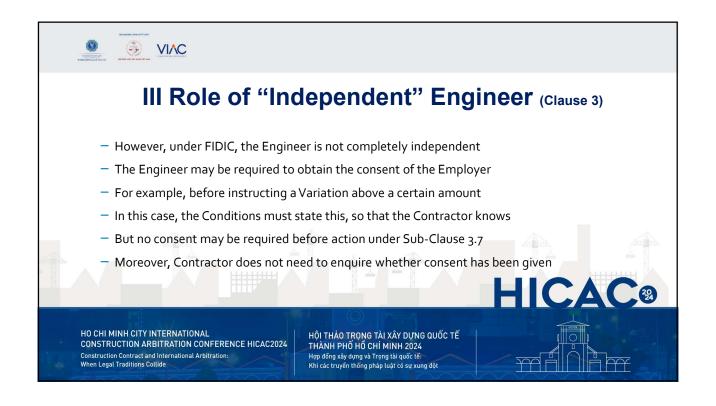






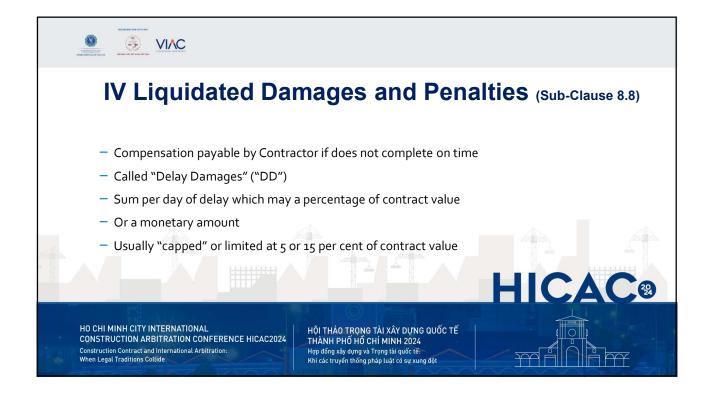




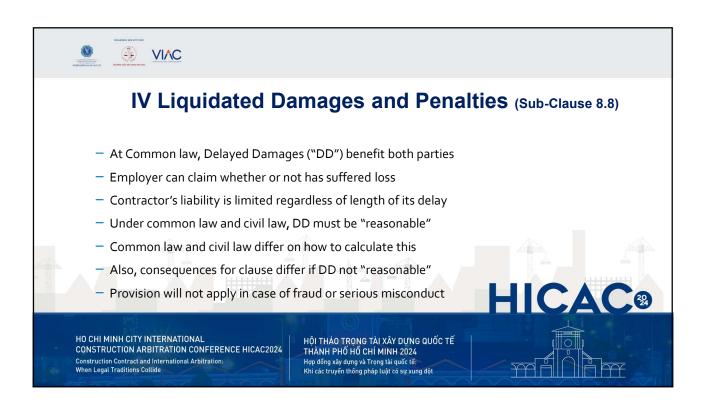


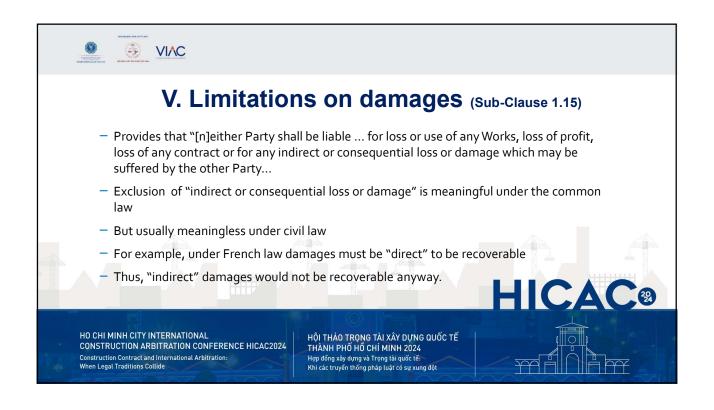




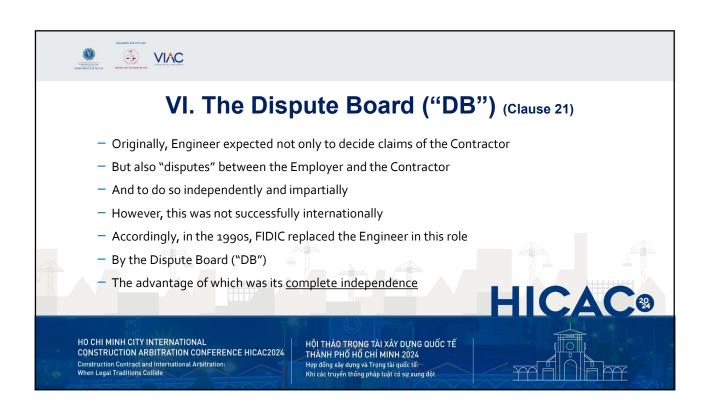


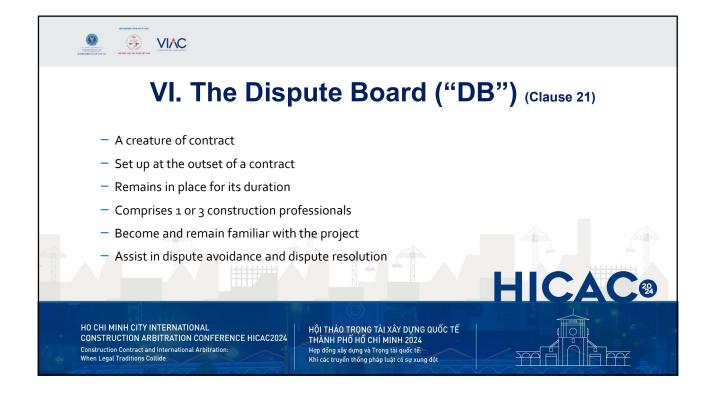




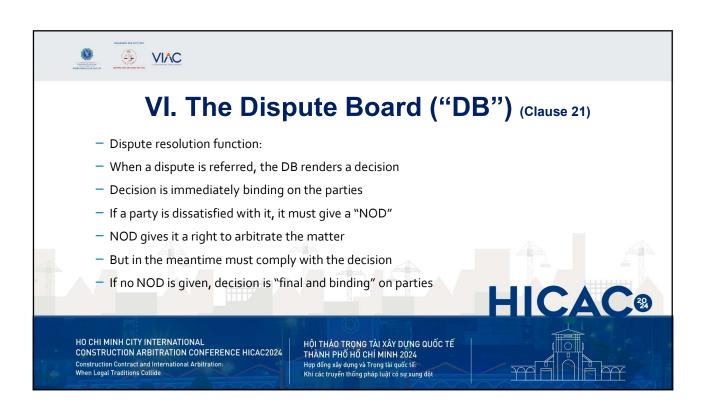


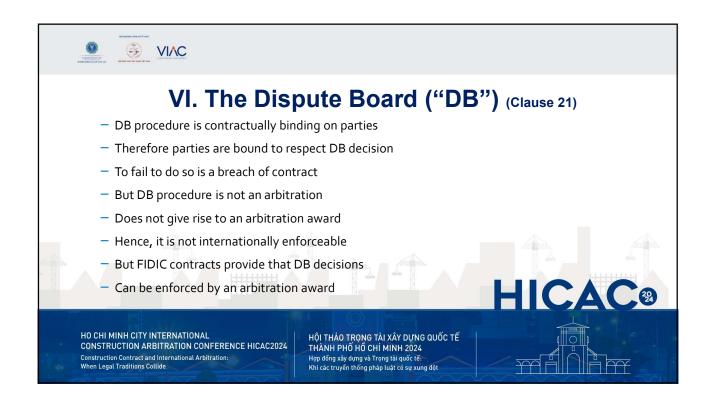




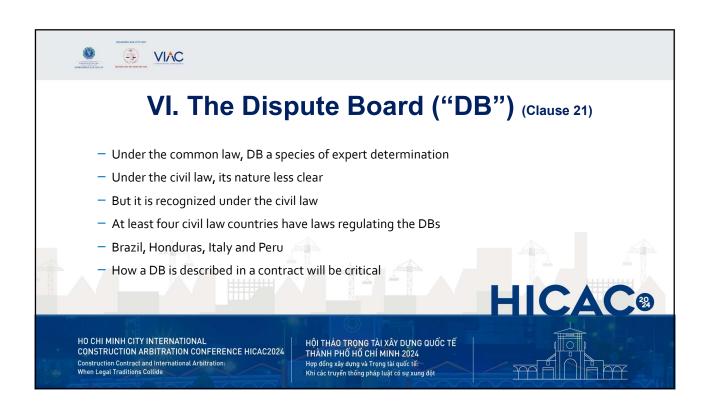


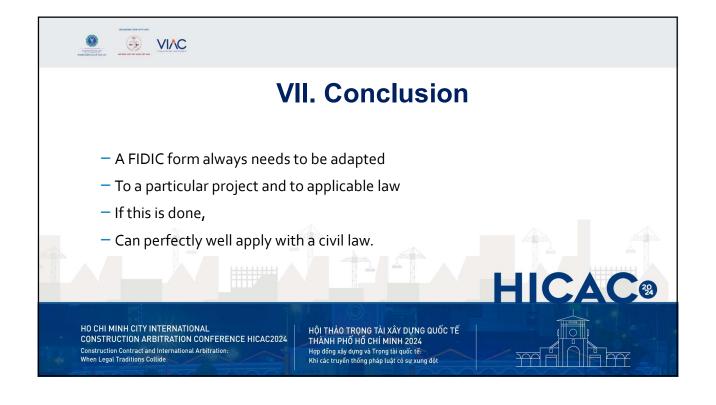




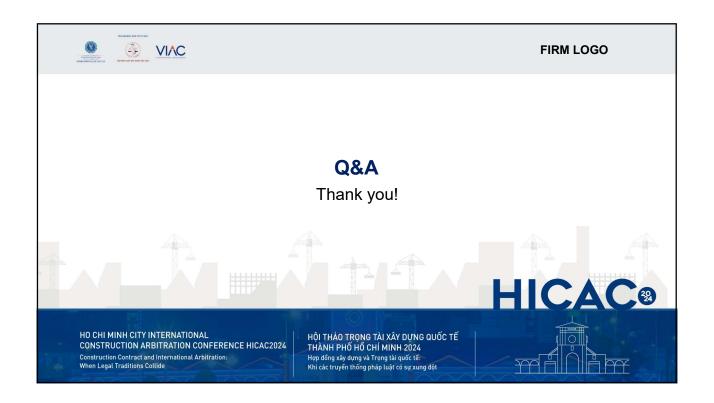




























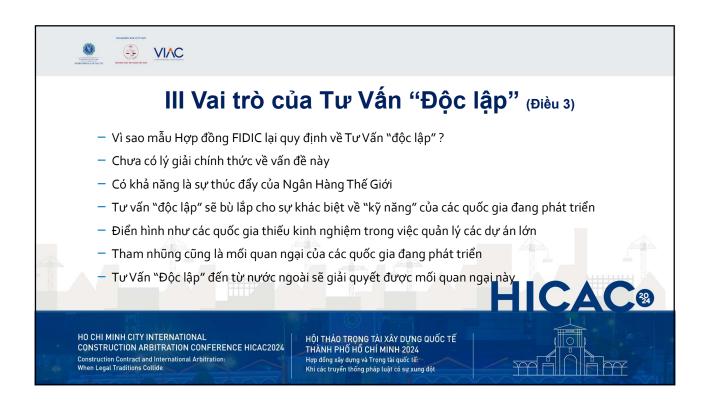






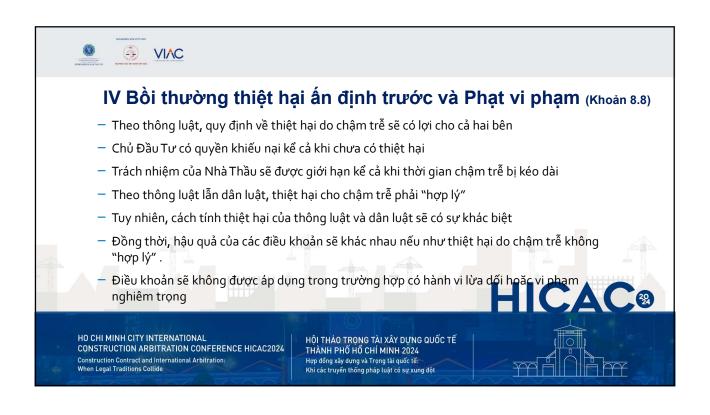






































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CONFERENCE ROOM

13:30 - 17:00

Section A: International Construction Contract-When Contract Clause Contradicts The Governing Law (By SCLVN)

13:30 - 15:00

Panel A1

Delay Penalty and Delay Damages

Speaker



Moderator Trinh Nguyen Founding partner of TNP Law Vice chairperson of SCL Vietnam



Nguyen Cong Phu Former Deputy Chief Justice of Economic Court of Ho Chi Minh City People's Court



Speaker **Akshay Kishore** Partner at Bird & Bird



Speaker **Pardeep Singh Khosa** Director at Morgan Lewis Stamford LLC



Speaker **Andrew Heng** Senior Partner at ZMM

15:00 - 15:30 15:30 - 17:00

Panel A2

Force Majeure, Fundamental Change of Circumstances and Exceptional Event



Moderator **Vu Thi Thinh** Senior Associate at LNT & Partners

CAMELLIA ROOM



Prof. Do Van Dai Vice Rector of Ho Chi Minh City University of Law



Antoine Logeay Partner at APFL & Partners Hanoi office



Assoc. Prof. **Nguyen Minh Hang** IAC's Arbitrator

Senior Lecturer at the Faculty of Law Foreign Trade University



Speaker **Kelvin Aw** Partner CMS

04

13:00 - 17:00

Section B: As East Meets West In International Arbitration (By VIAC)

13:00 - 13:30

Registration

13:30 - 13:35

Opening remarks

13:35 - 13:50

MoU Signing Ceremony between Vietnam International Arbitration Centre (VIAC) and Dubai International Arbitration Centre (DIAC)

13:50 - 15:15

Panel B1

Dynamics of Multiple Legal systems regulating an International Arbitration and Implications for Choice of Laws



Ngo Thanh Tung Managing Partner at VILAF VIAC's Listed Arbitrator



Assoc. Prof. Duong Anh Son VIAC's Listed Arbitrator,Lecturer at Faculty

of Economic Law, University of Economics and Law - Vietnam National University



Charis Tan Partner at Peter & Kim

15:15 - 15:30 15:30 - 17:00 **Break**

Panel B2

Inquisitorial Style vs. Adversarial Style in International Arbitration & Best Practices



Moderator/Speaker Nguyen **Manh Dzung**

Chambers, Deputy Director of Vietnam Institute for International Arbitration (VIART) at VIAC



Do Khoi Nguyen Partner at YKVN (Singapore) VIAC's Listed Arbitrator

Ho Chi Minh City



Đao Nhu Ngoc Linh Associate at Rajah & Tann LCT





Joel Ouek Partner at WongPartnership LLB

NETWORKING EVENT

18:00-21:00





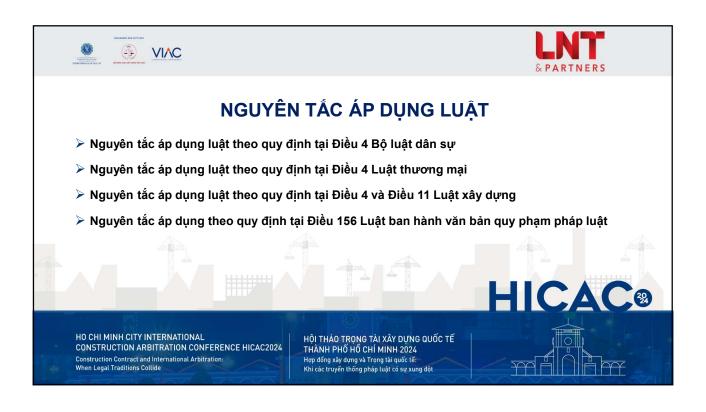






















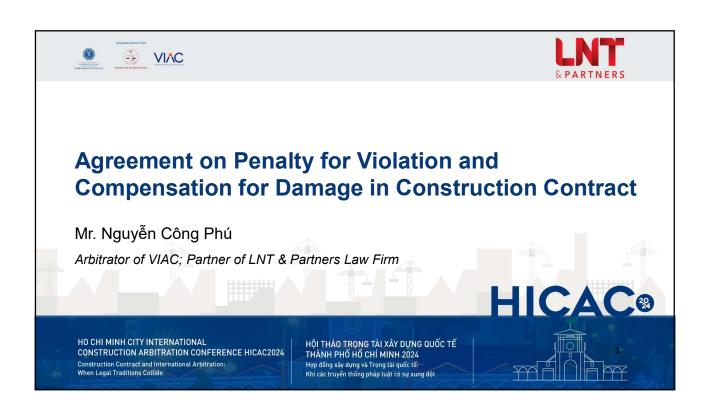


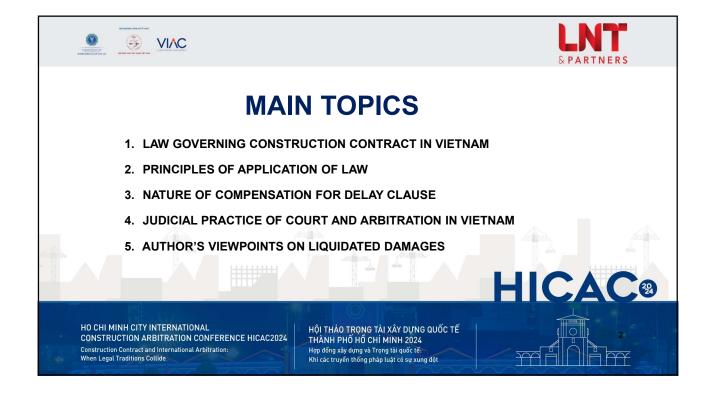












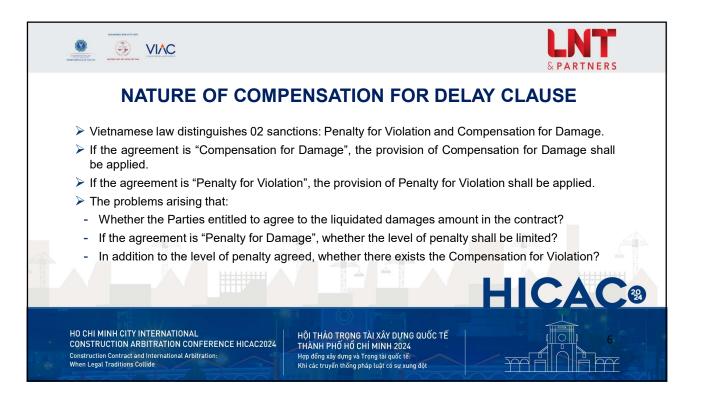




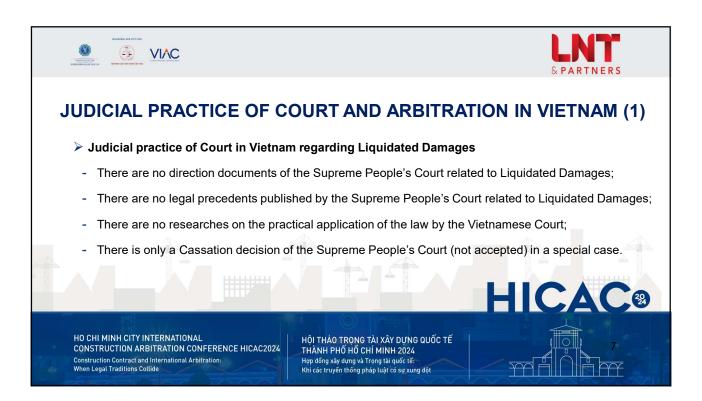


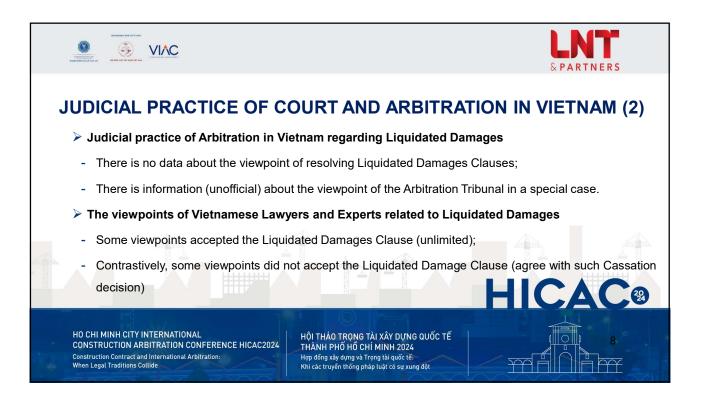




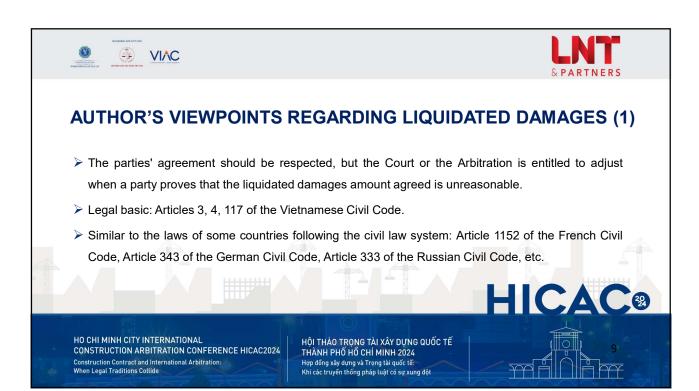






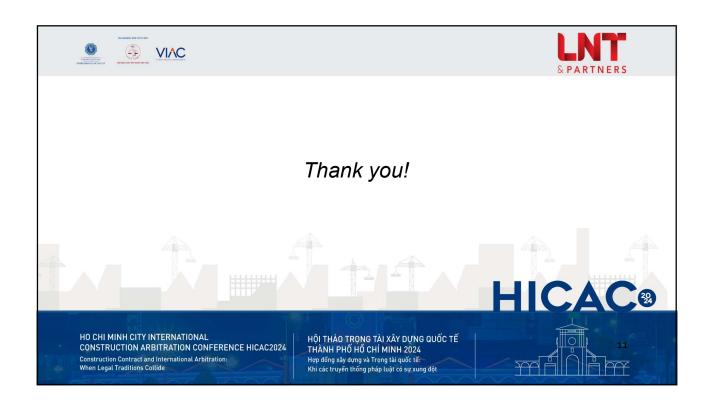




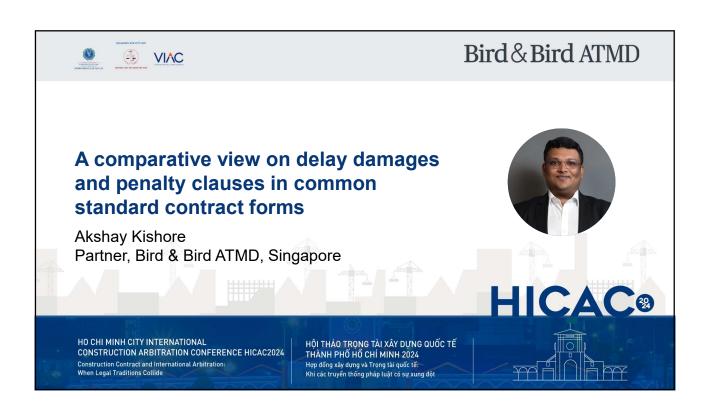






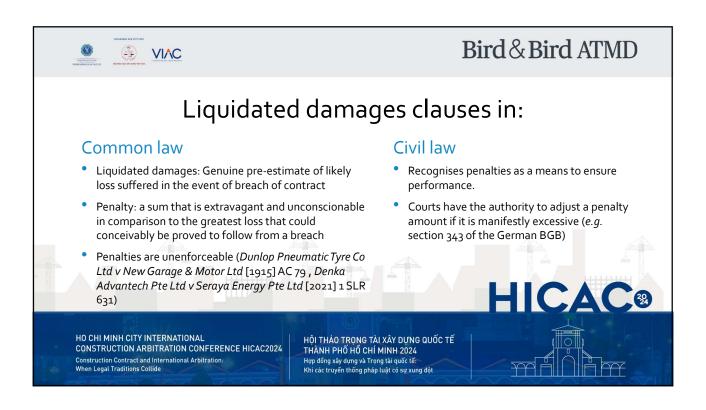












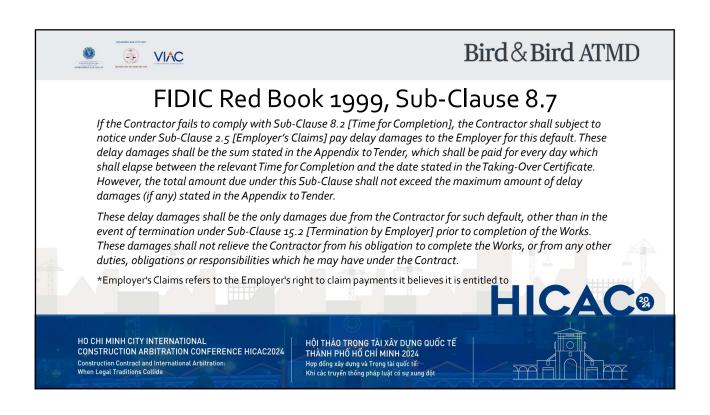


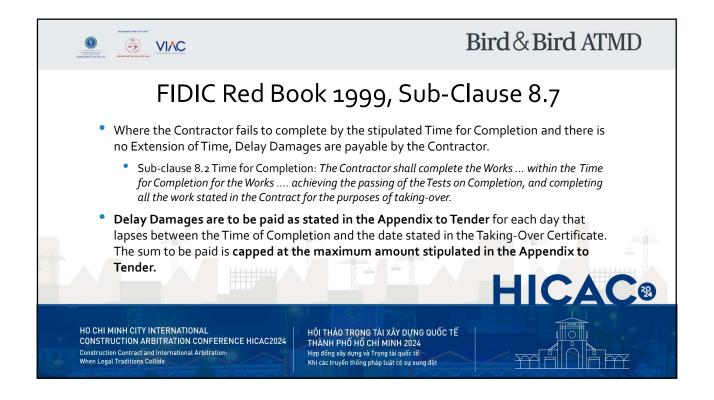




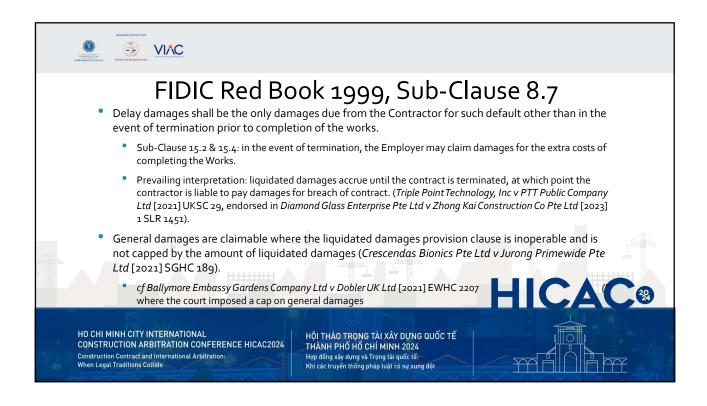
























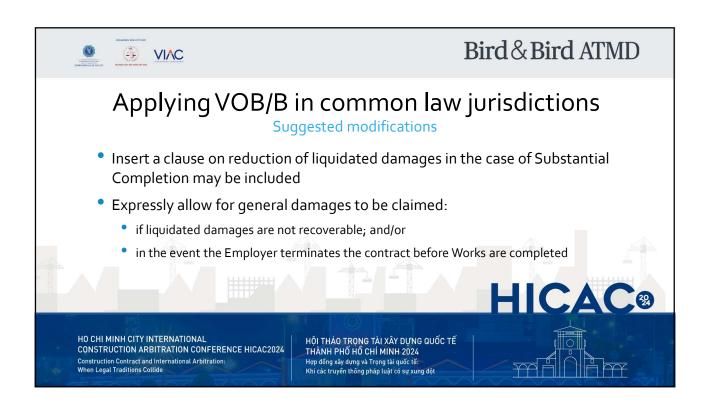


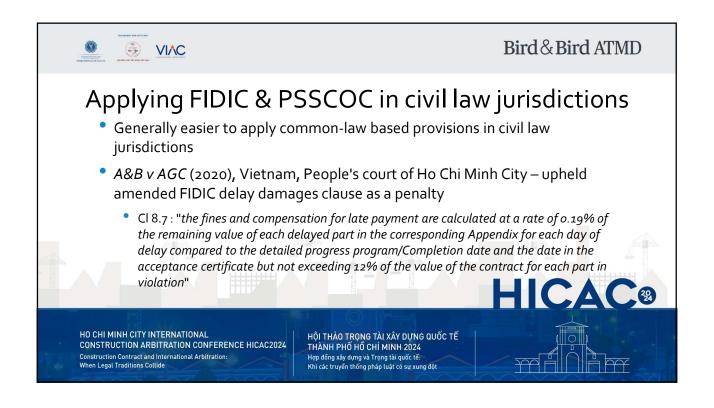






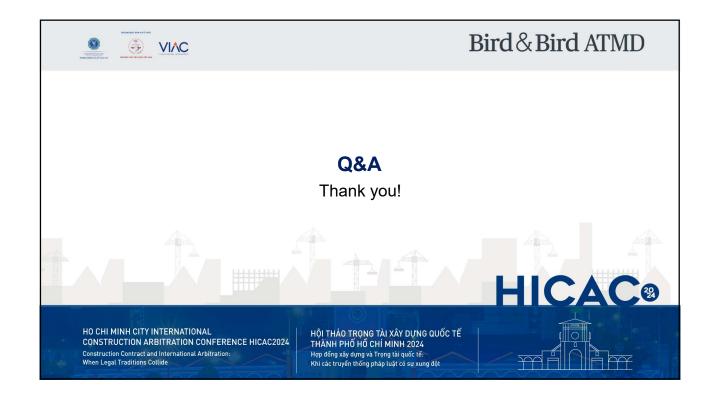




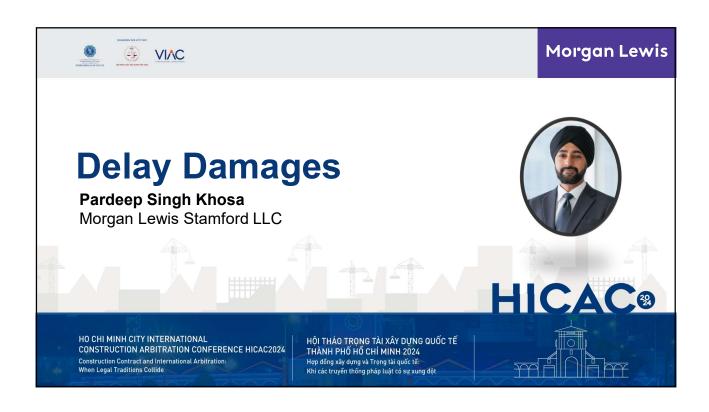








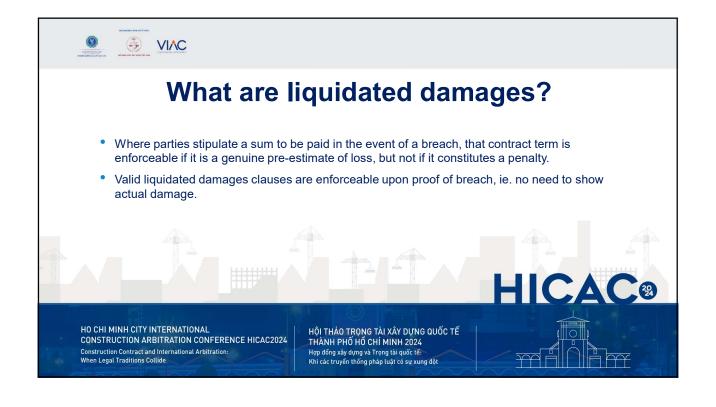




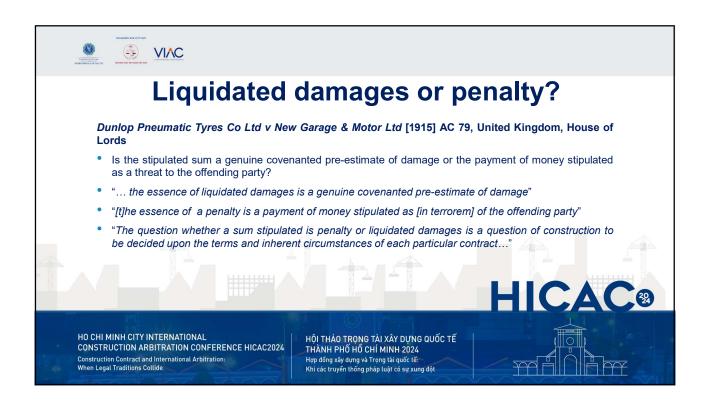


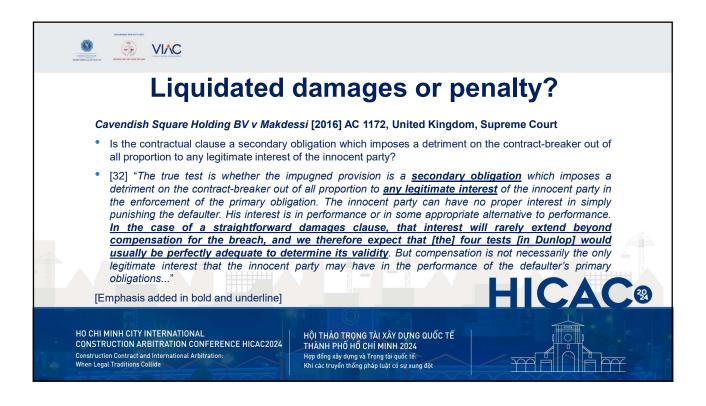




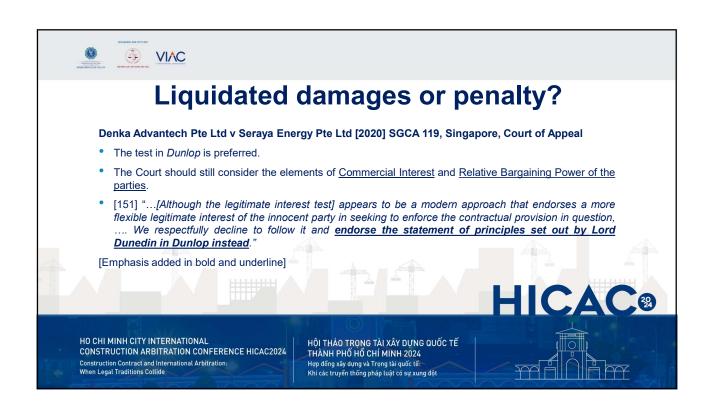


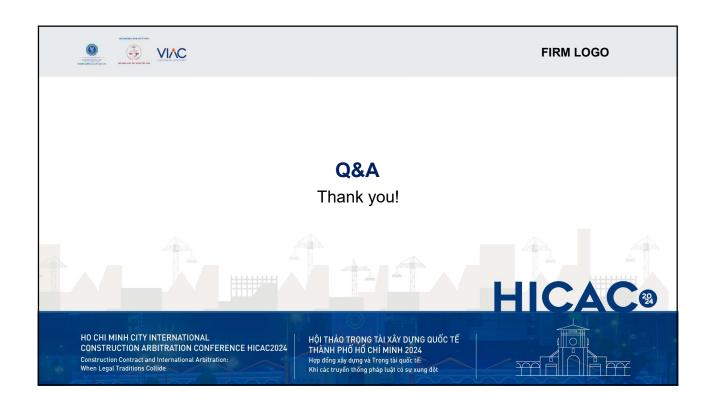












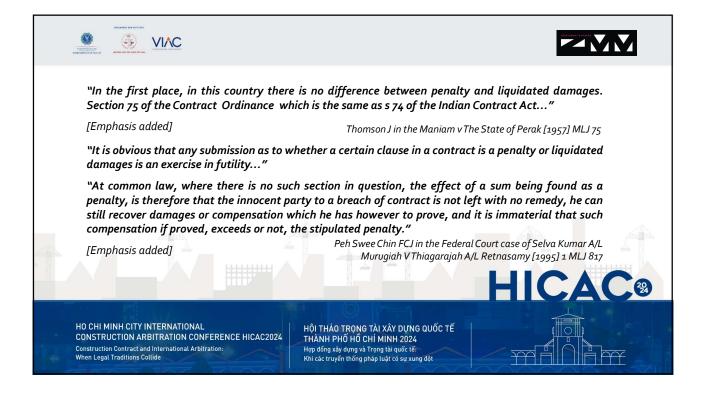




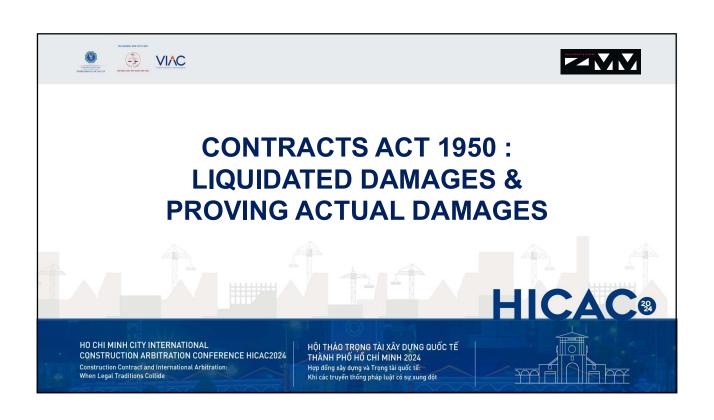


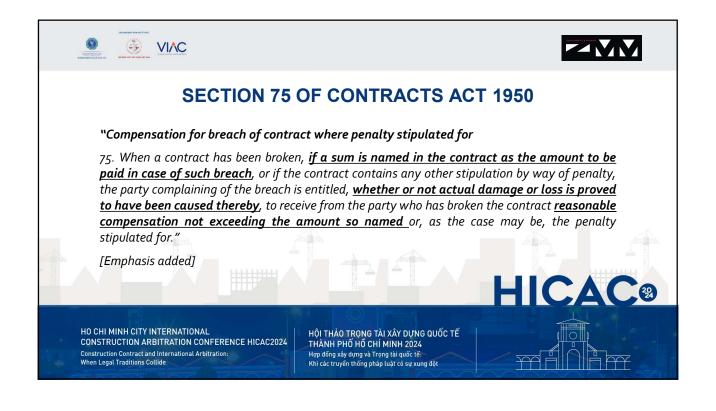




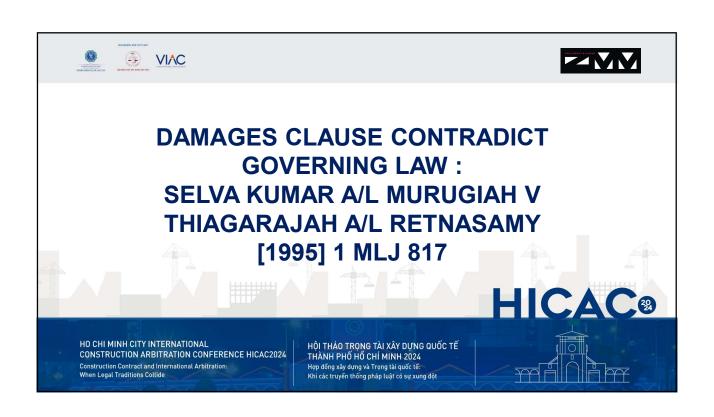






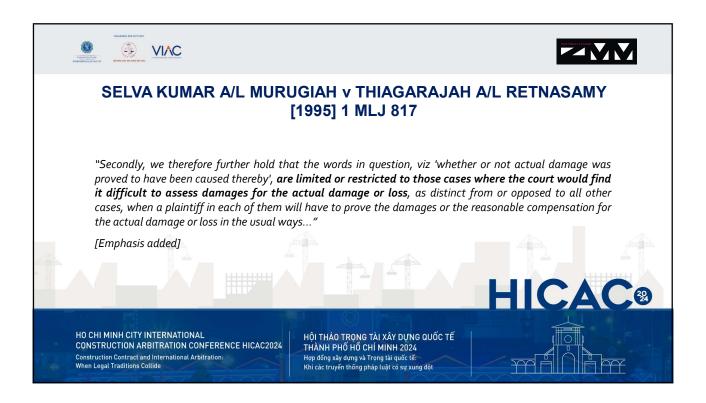


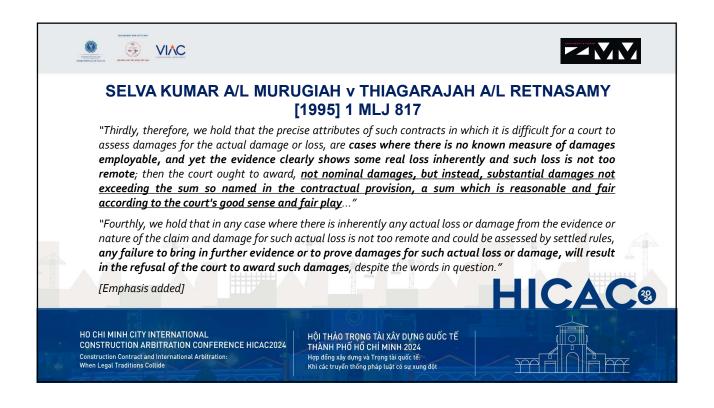






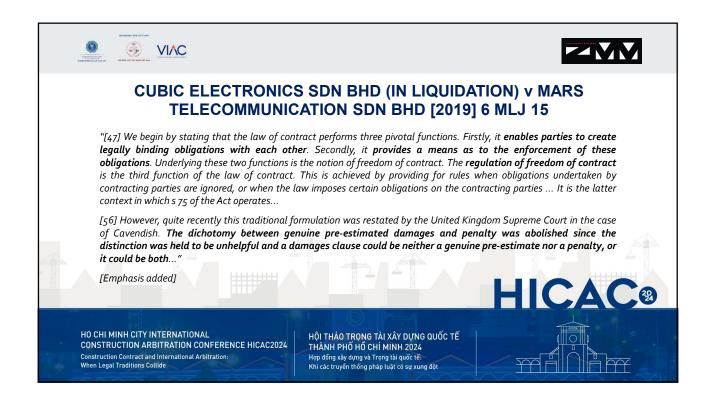










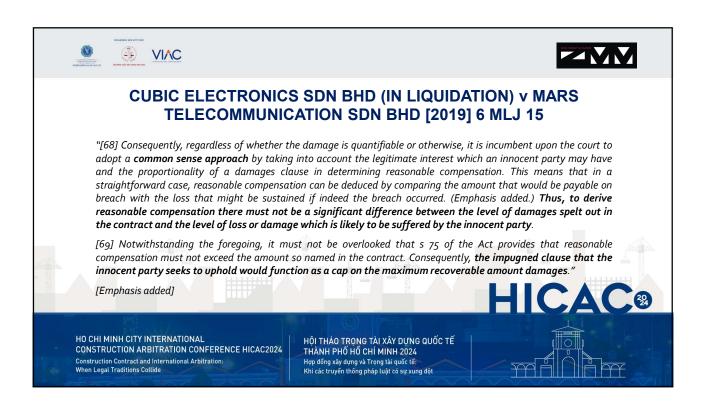


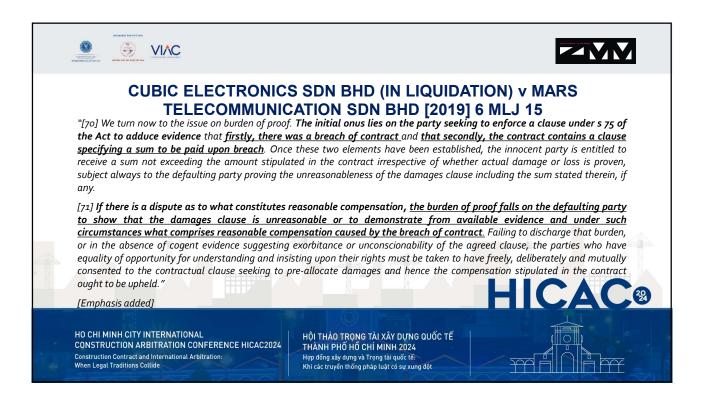












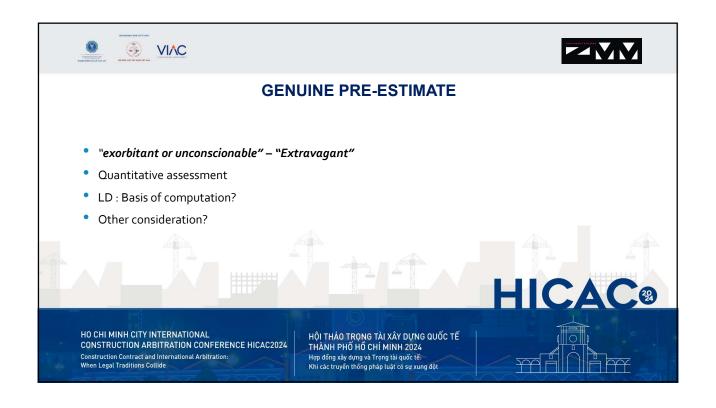






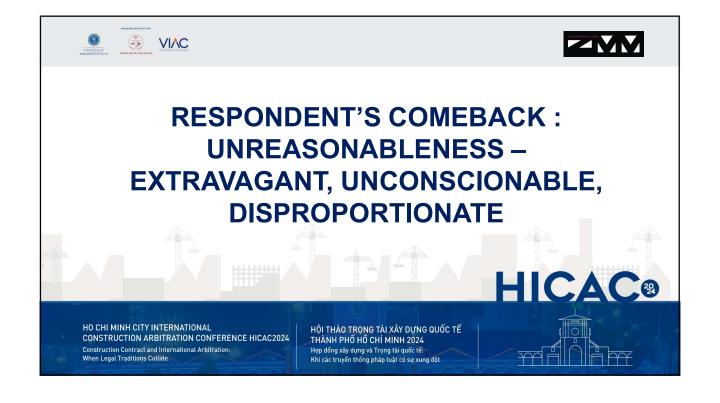










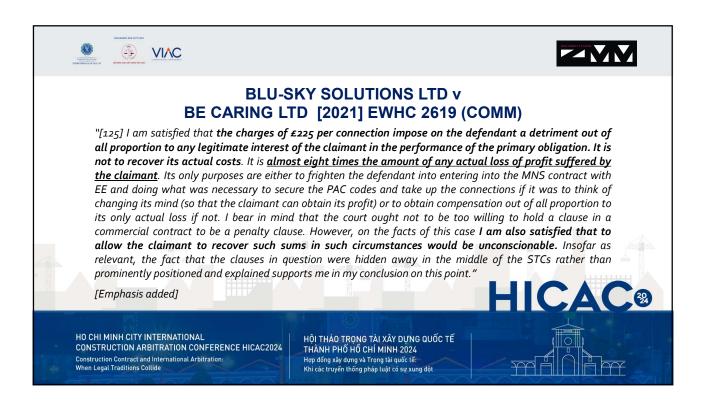
































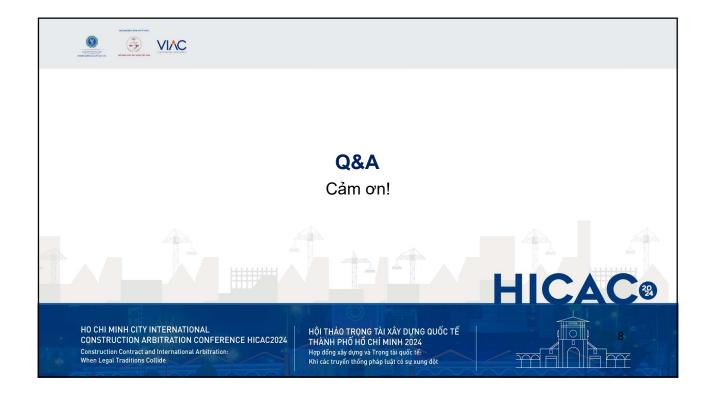






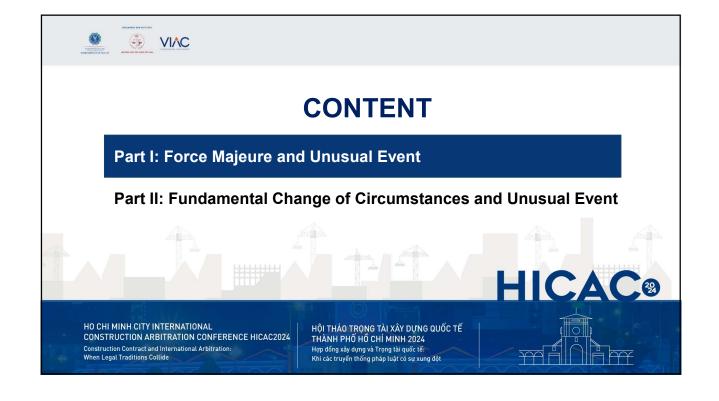






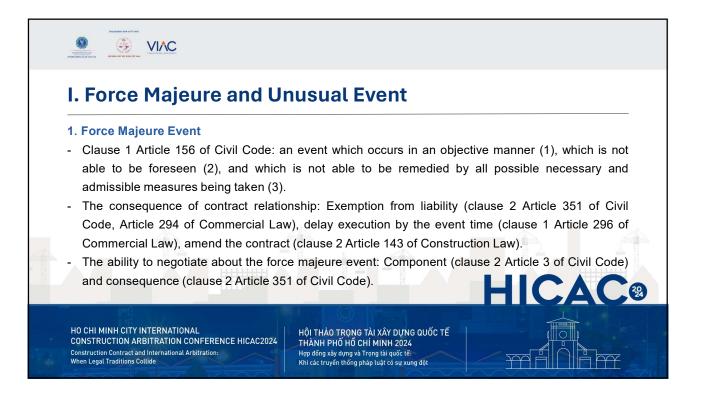






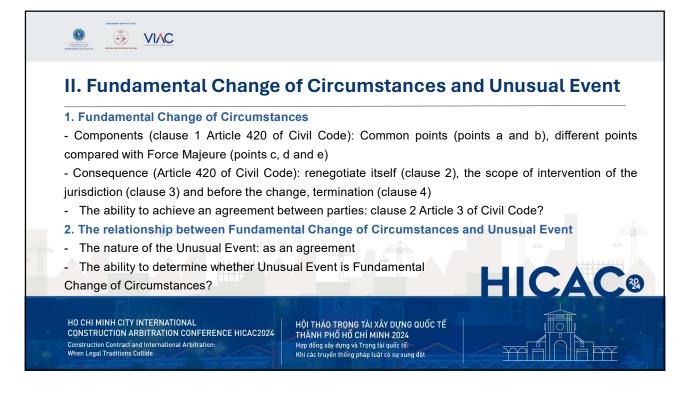




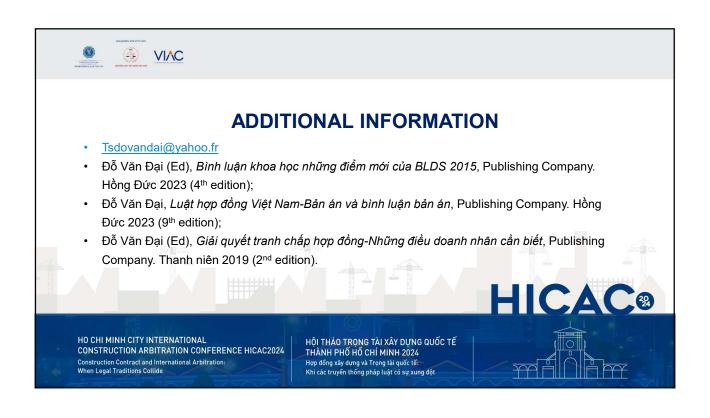


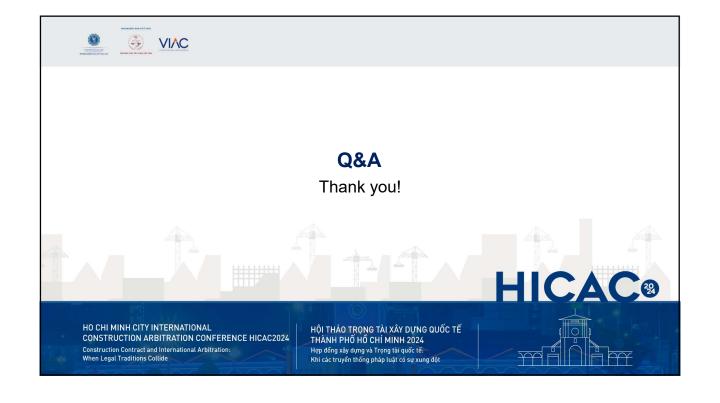










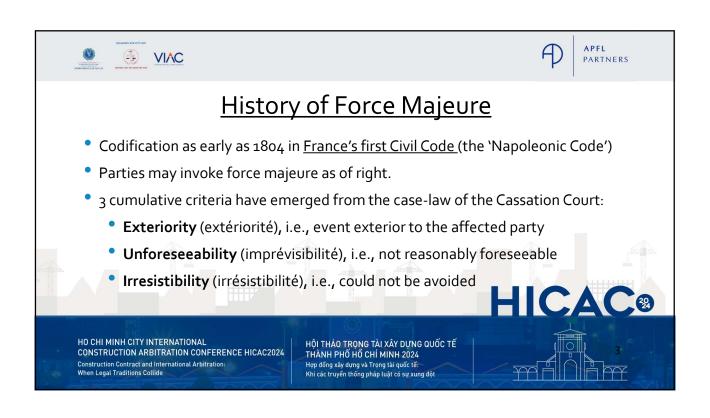


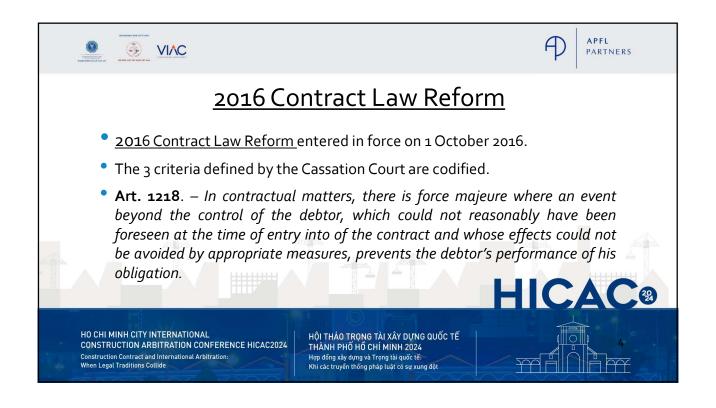




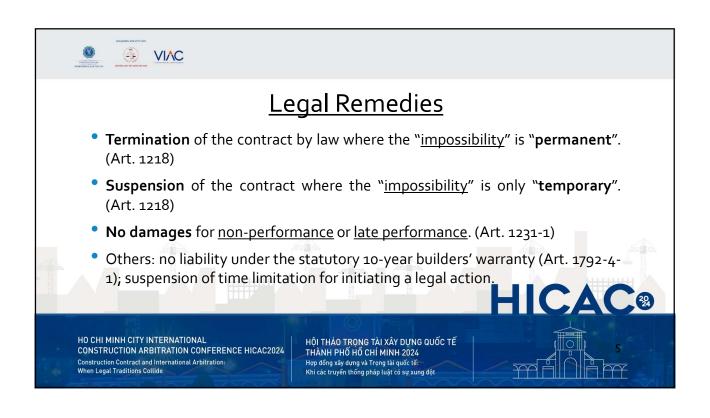






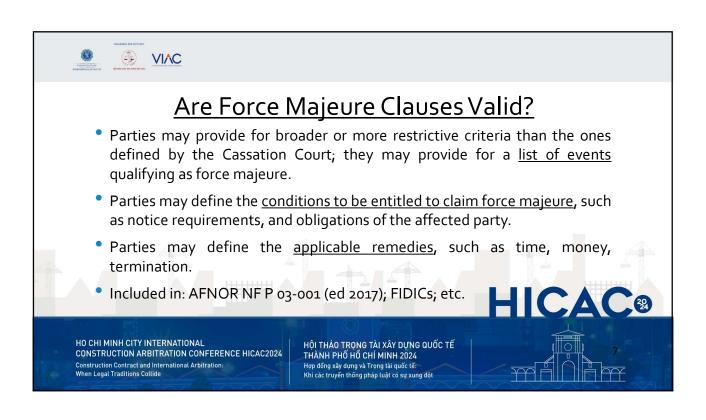


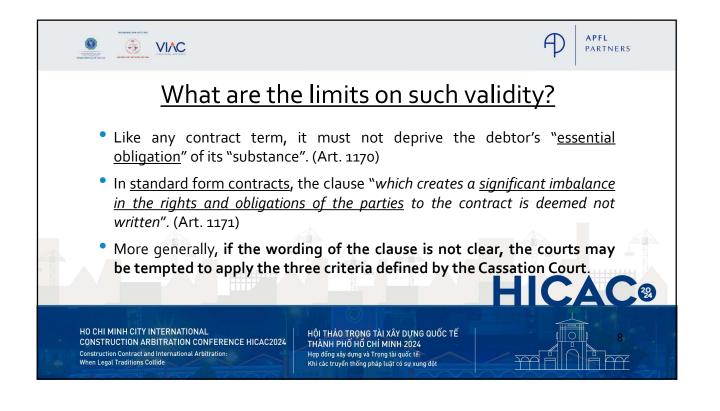




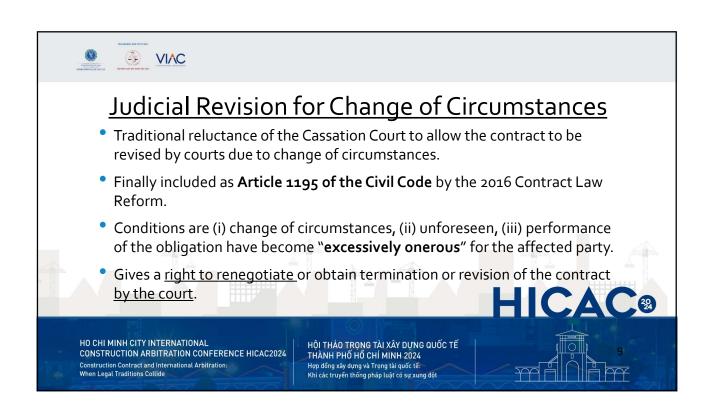


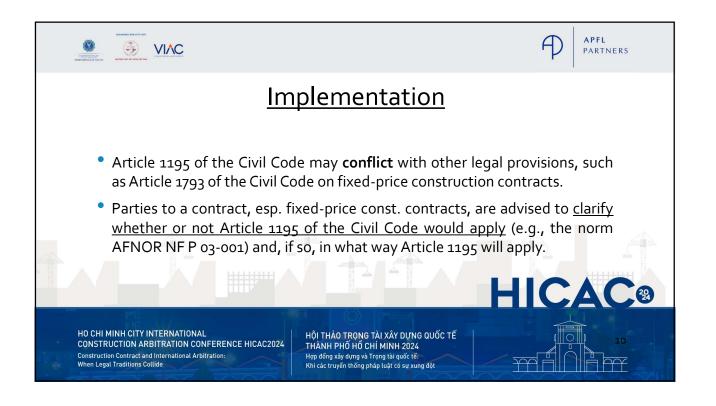




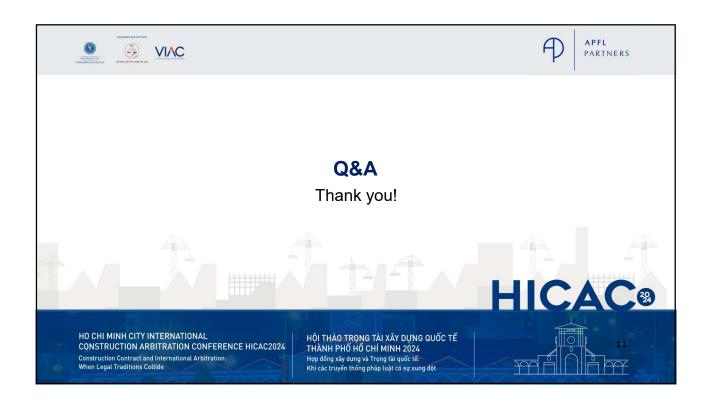






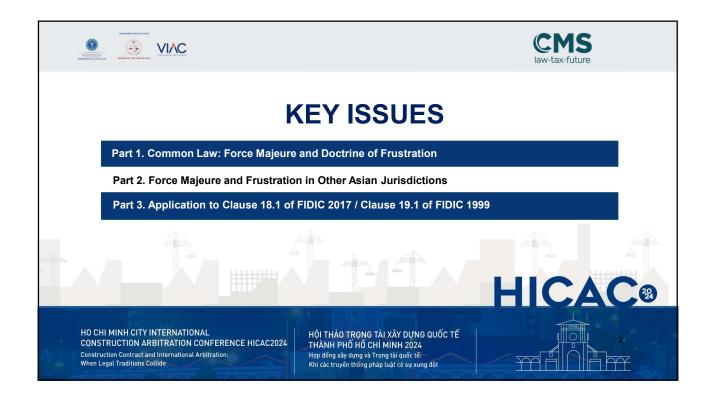




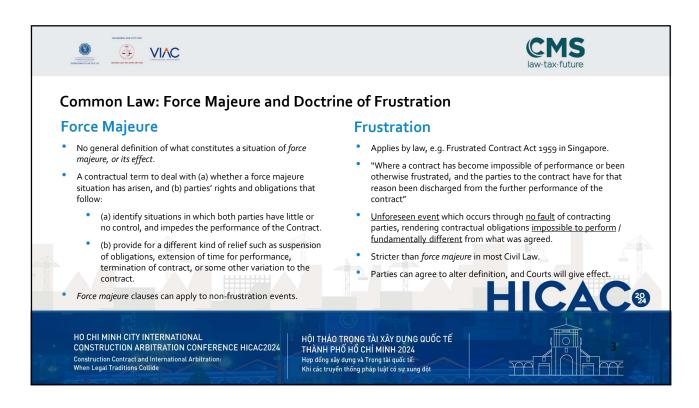








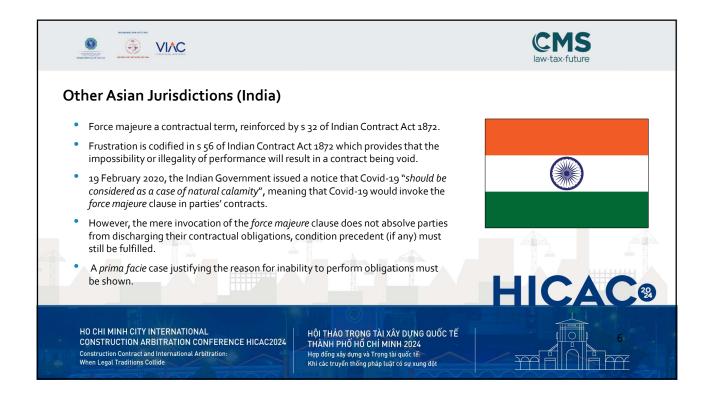










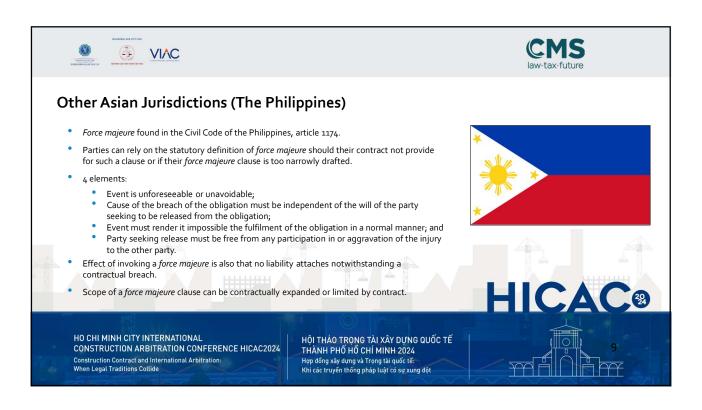


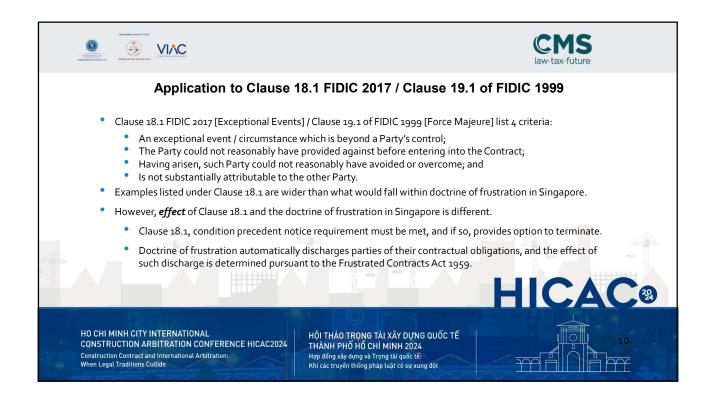




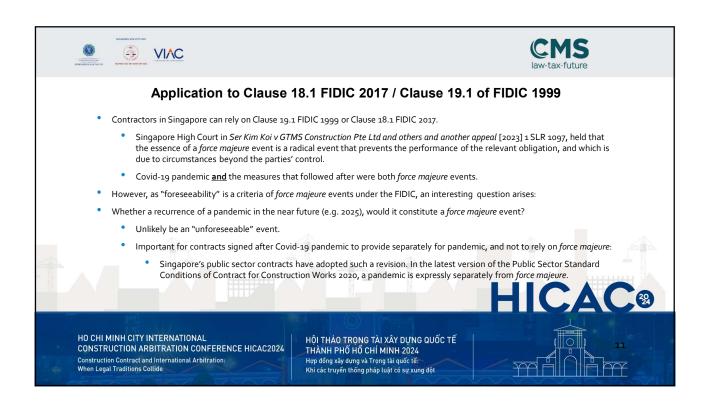


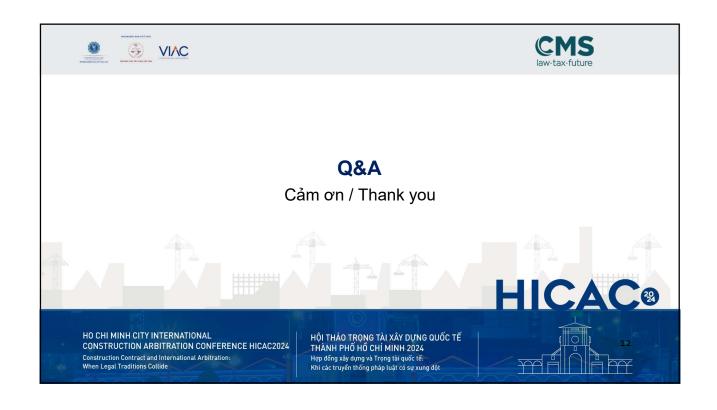






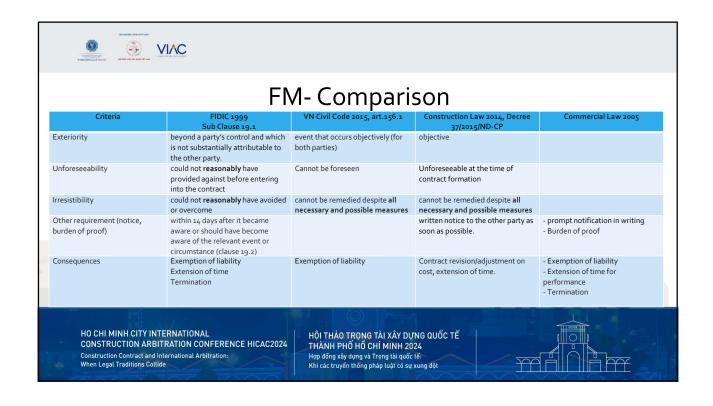












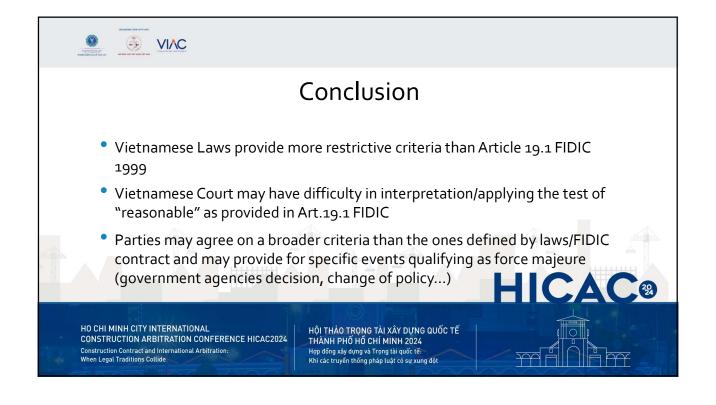




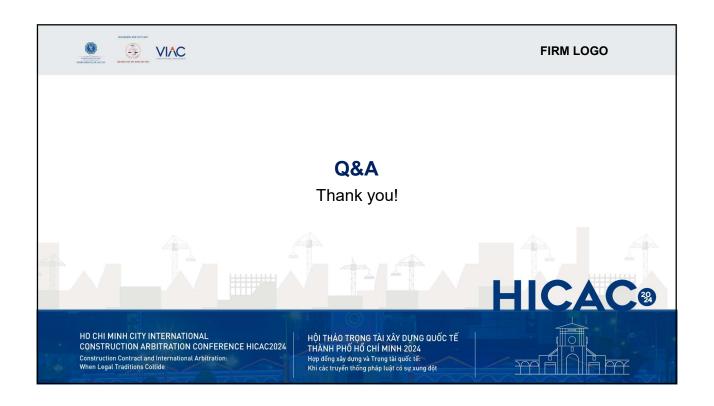






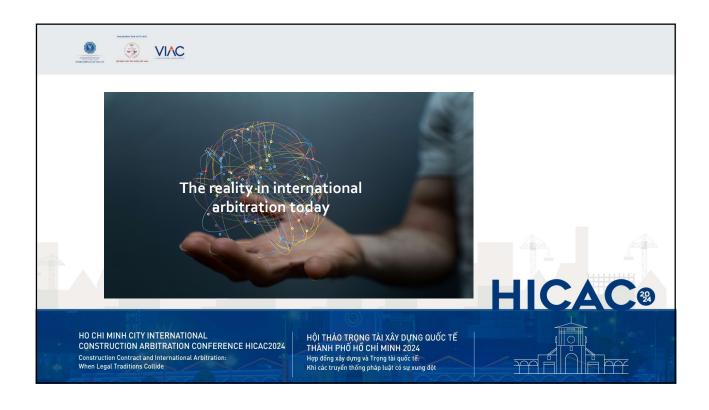




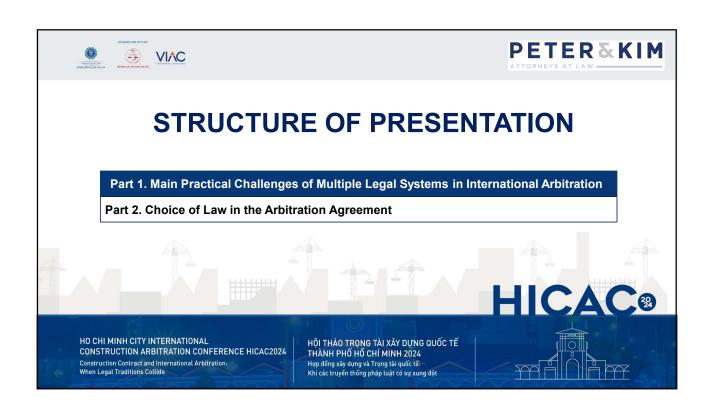






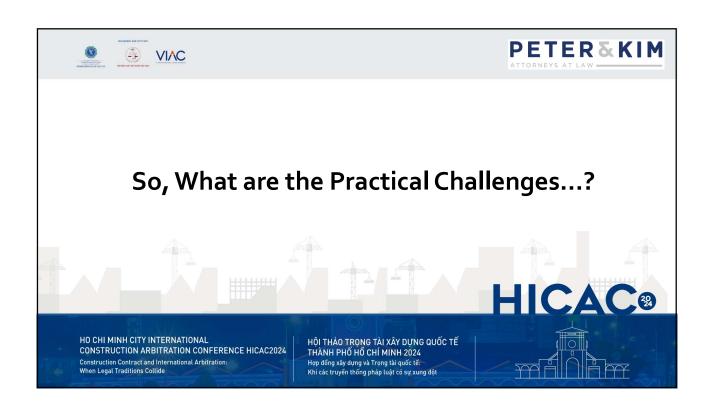












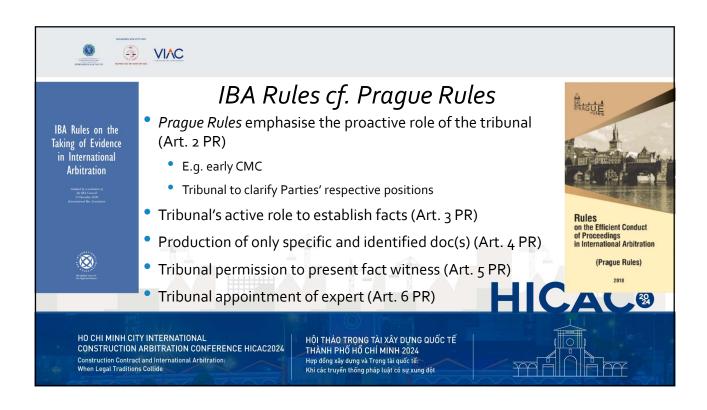












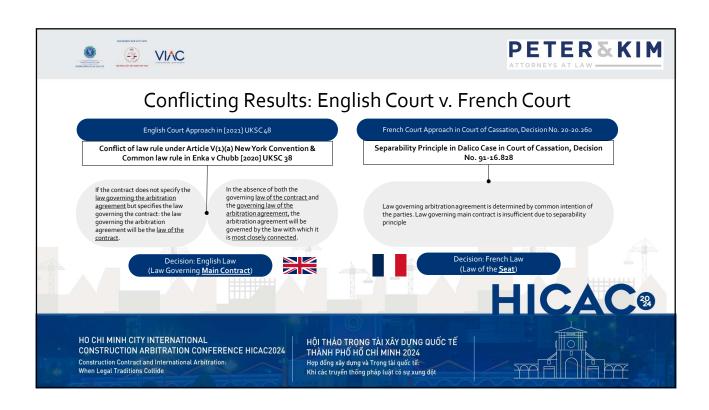














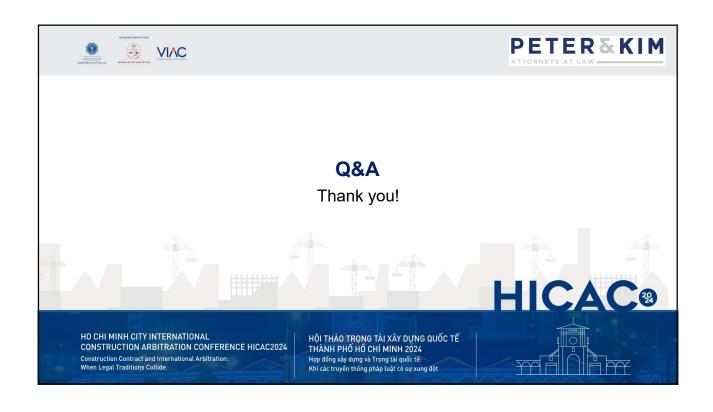
















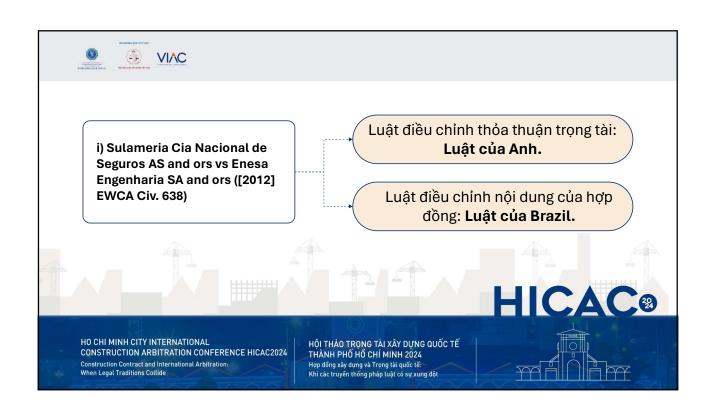


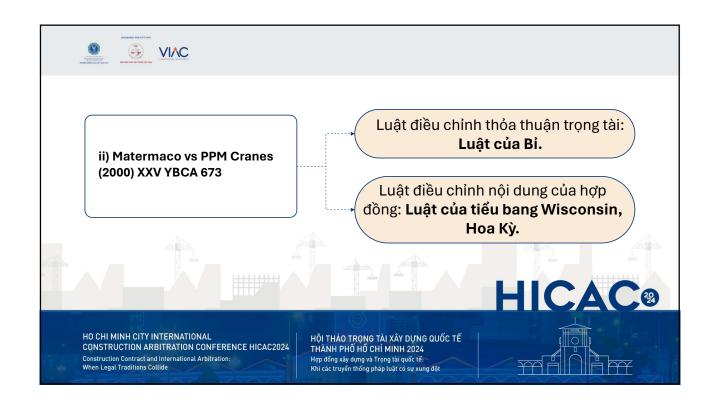


































5. Khác biệt/mâu thuẫn về các thuật ngữ tố tụng

Khoản 8 Điều 3 Luật Trọng tài thương mại năm 2010 quy định như sau: "Địa điểm giải quyết tranh chấp là nơi Hội đồng Trọng tài tiến hành giải quyết tranh chấp theo sự thỏa thuận của các bên hoặc do Hội đồng Trọng tài quyết định nếu các bên không có thỏa thuận. Nếu địa điểm giải quyết tranh chấp được tiến hành trên lãnh thổ Việt Nam thì phán quyết phải được coi là tuyên tại Việt Nam mà không phụ thuộc vào nơi Hội đồng Trọng tài tiến hành phiên họp để ra phán quyết đó".

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6. Khó khăn trong việc xác định luật áp dụng

- **01.** Không làm rõ khái niệm "pháp luật áp dụng" đó hàm chứa nội dung gì, có bao gồm luật quốc tế mà quốc gia đã ký kết, gia nhập không? "Pháp luật" được nhắc đến có bao gồm các nguyên tắc pháp luật quốc tế được thừa nhận rộng rãi và các luật mẫu không?
- **02.** Khi các bên lựa chọn pháp luật của một quốc gia thì có bao gồm quy phạm xung đột hay không, có chấp nhận việc dẫn chiếu đến một hệ thống pháp luật khác?



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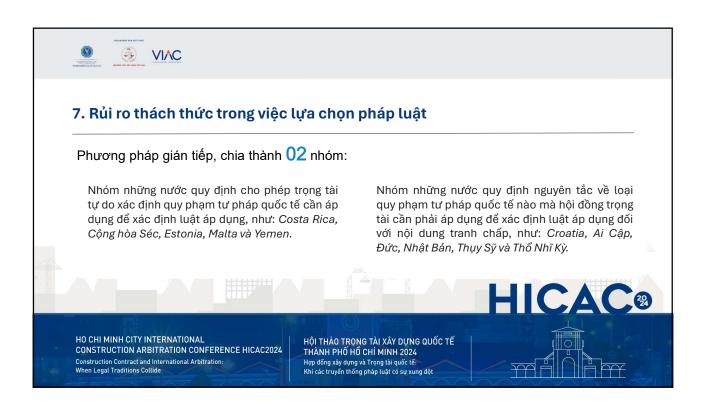


































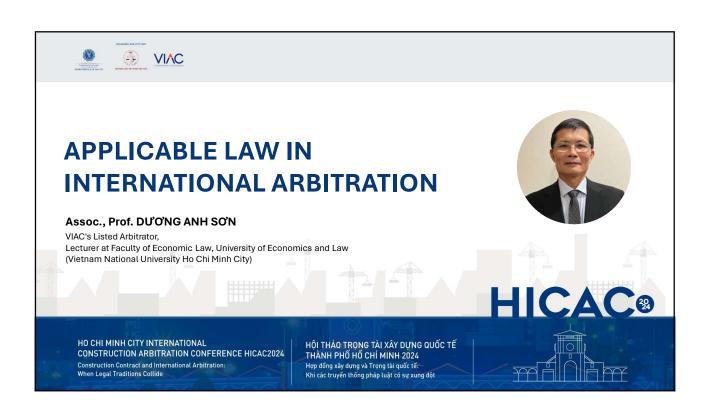












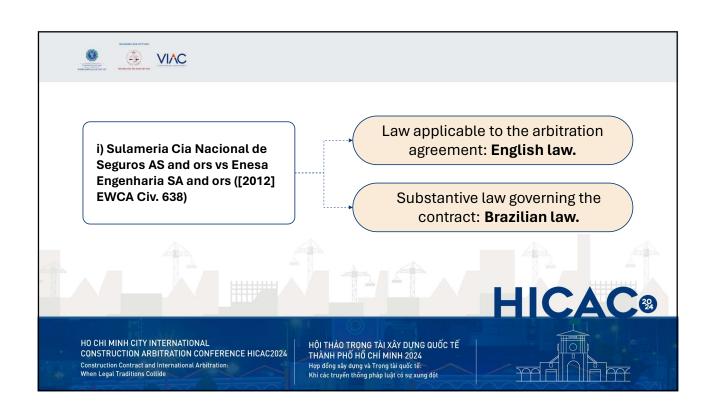


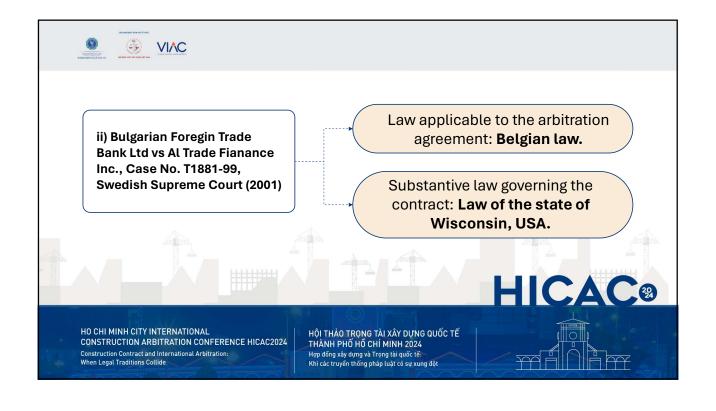


















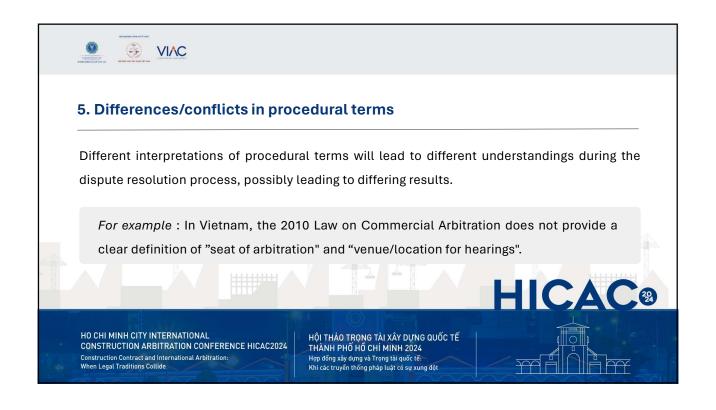




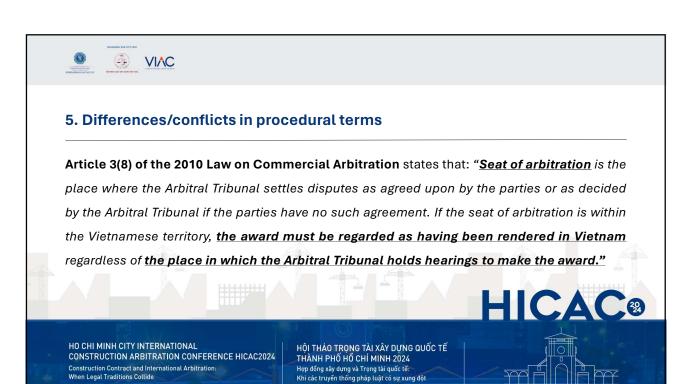




































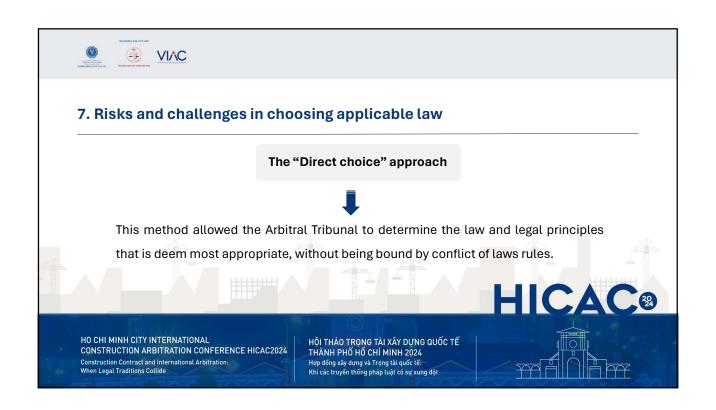






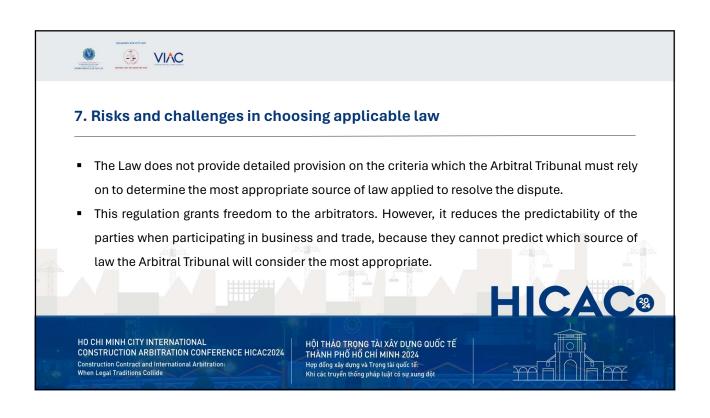


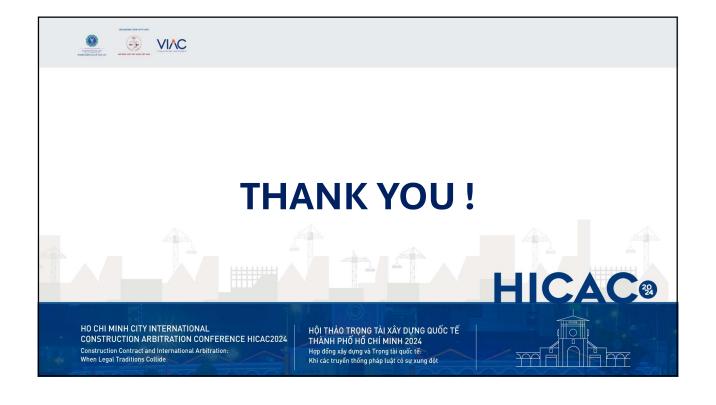




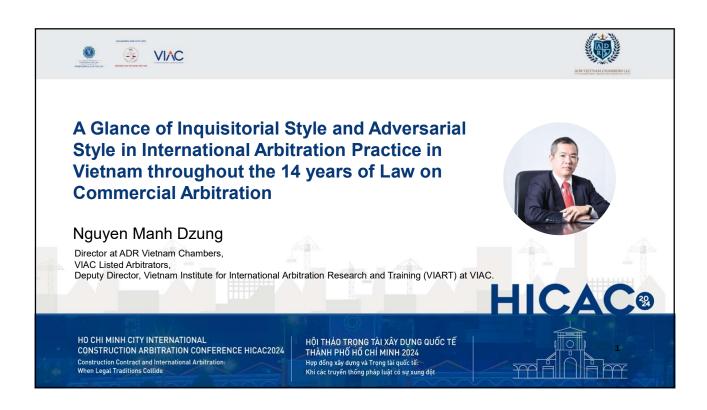


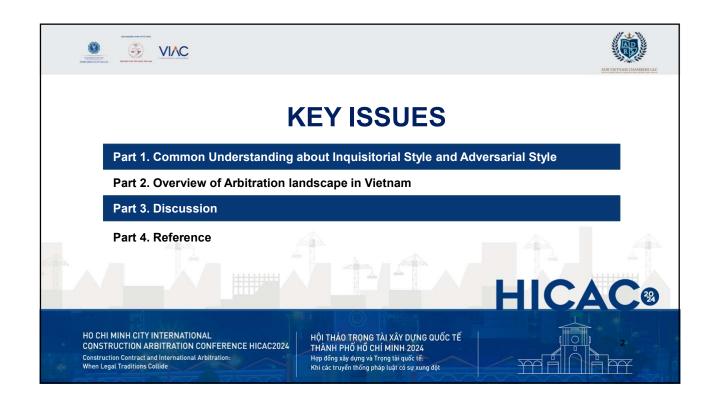




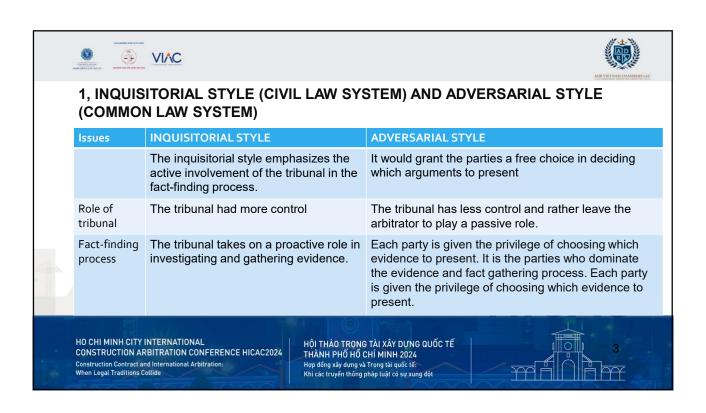


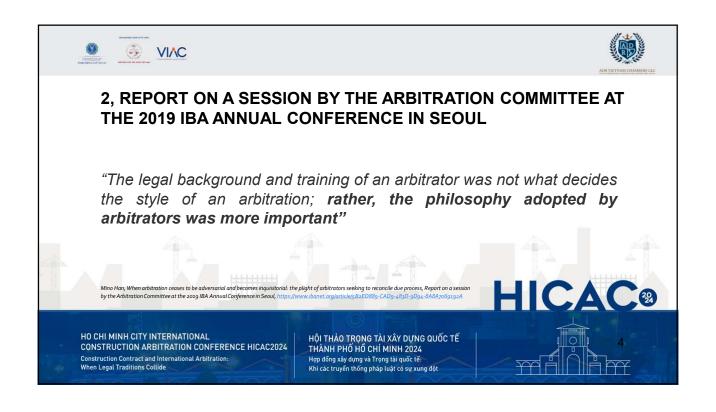




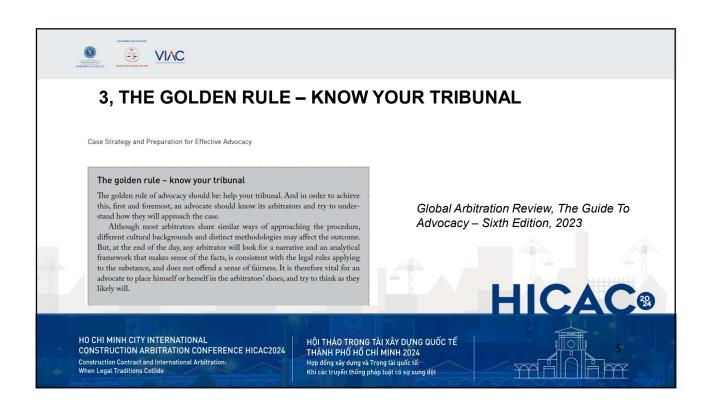


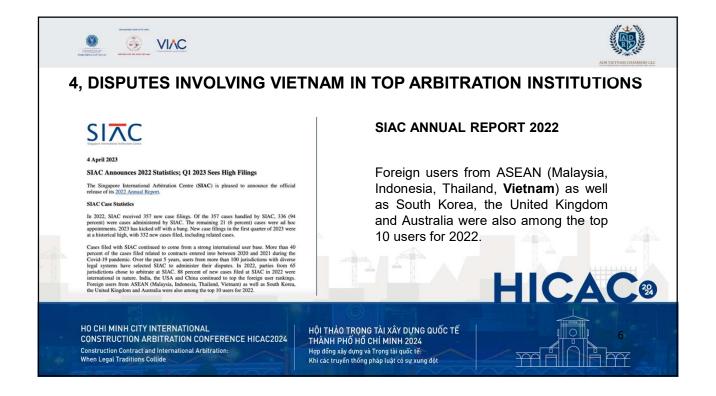




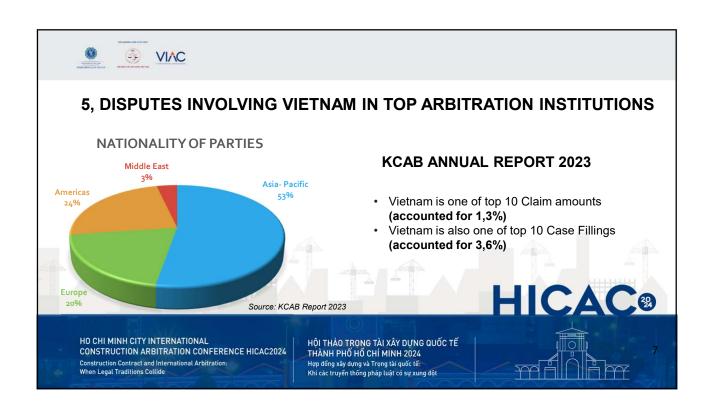






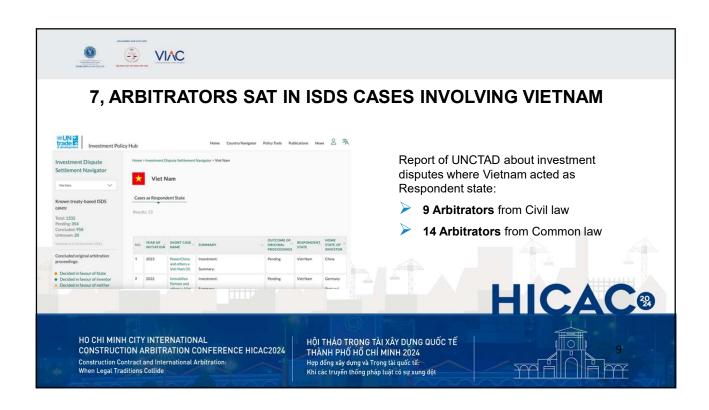


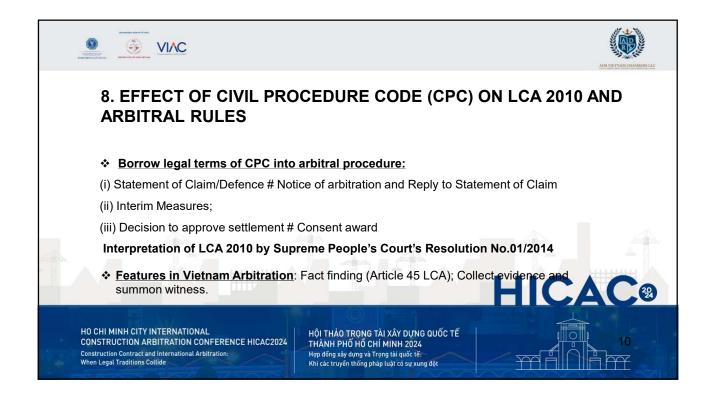




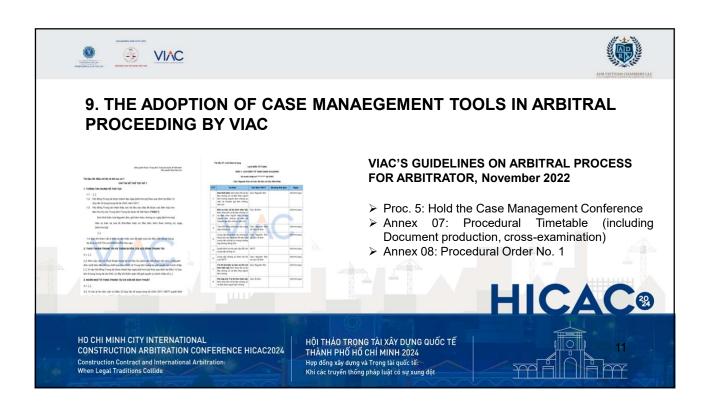


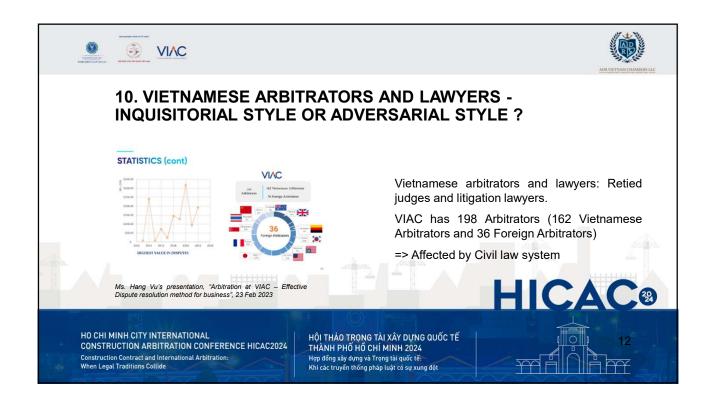




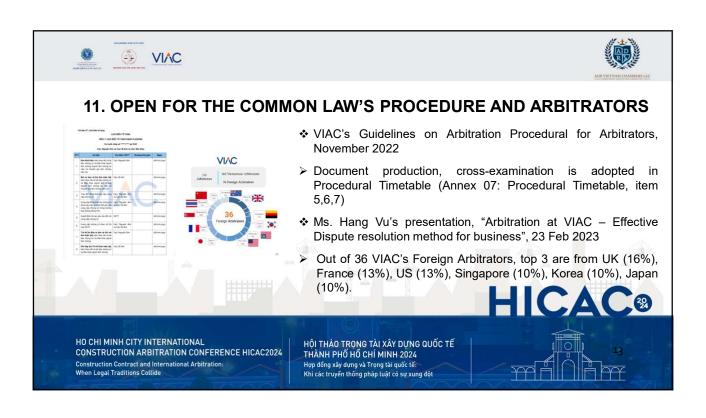


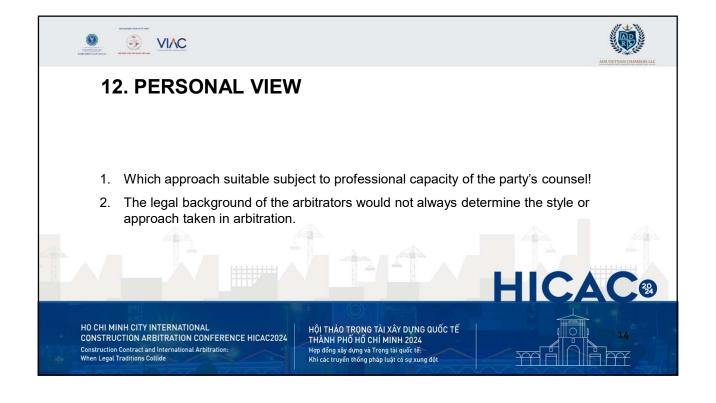




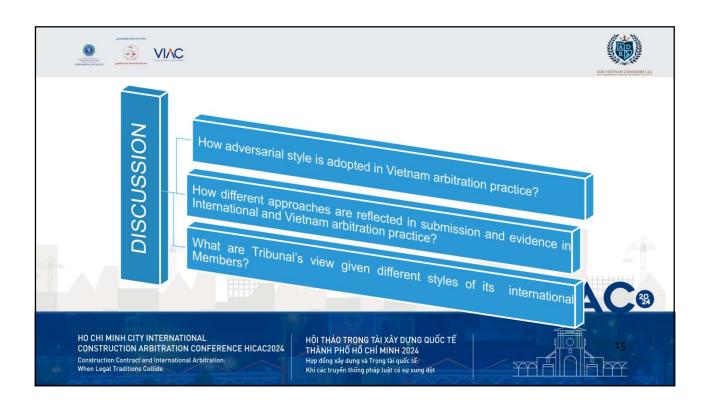


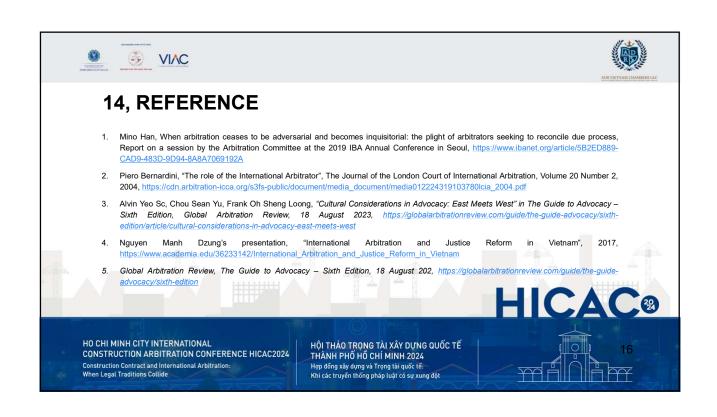




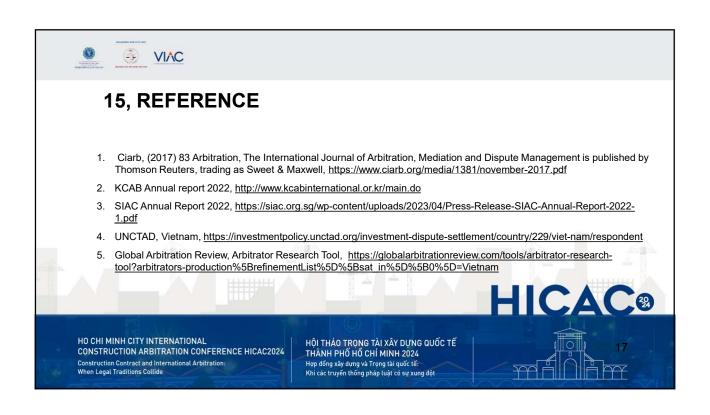


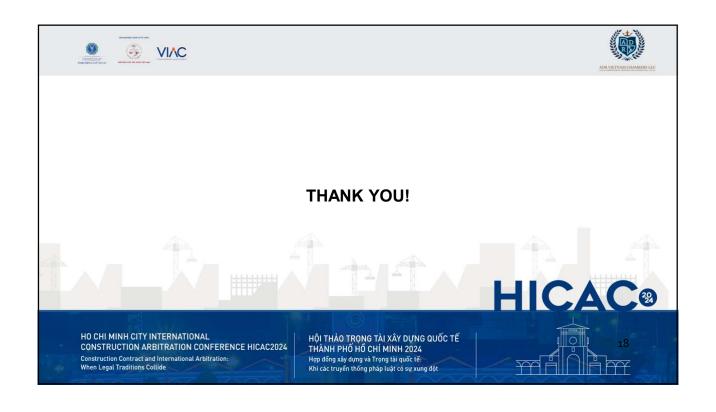










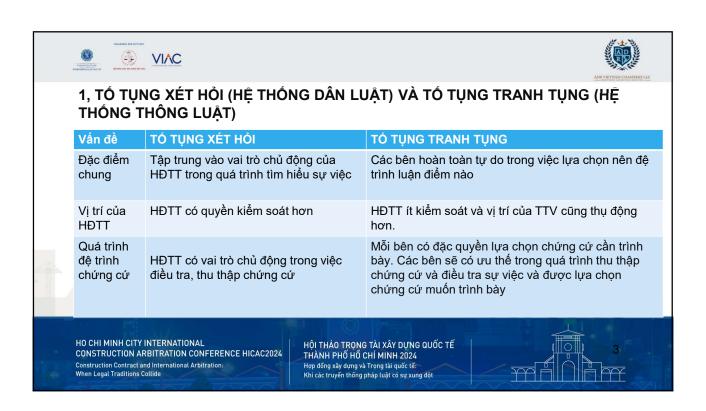


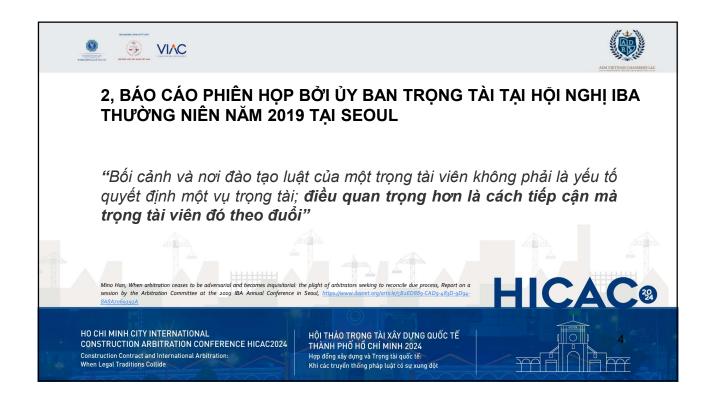










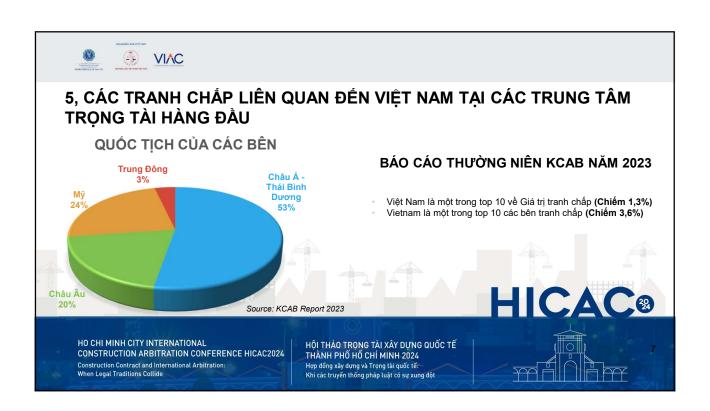








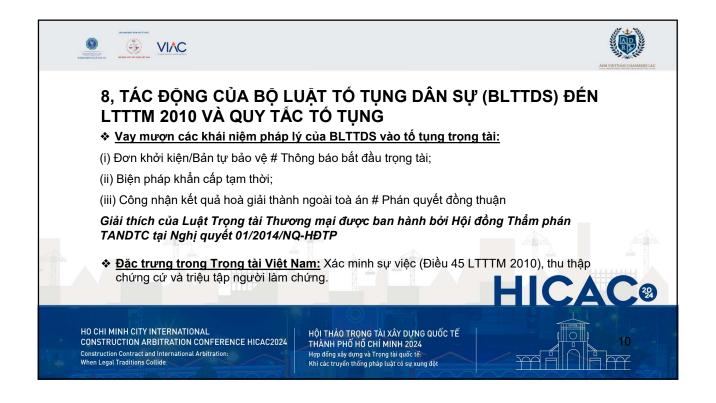




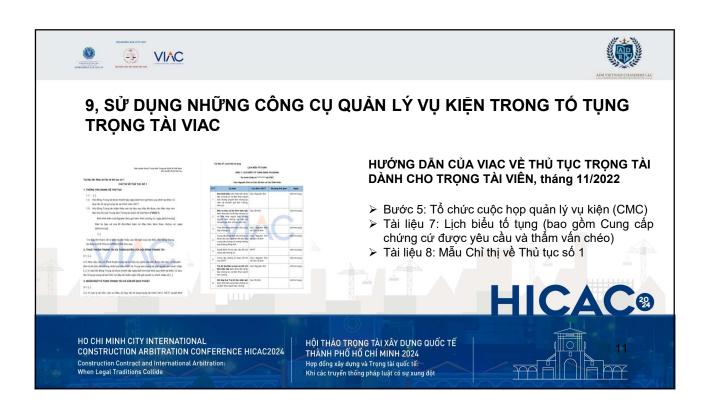






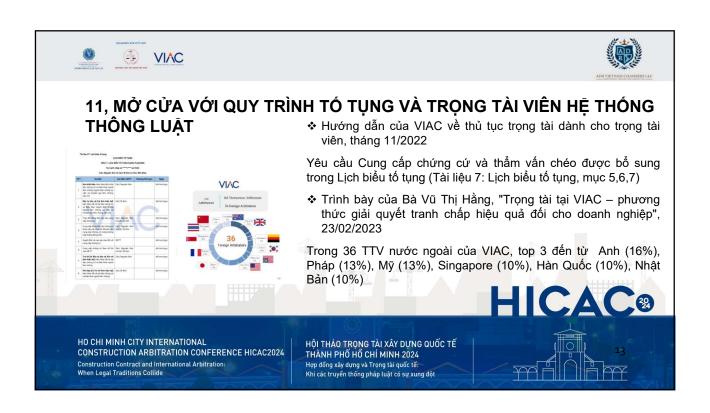


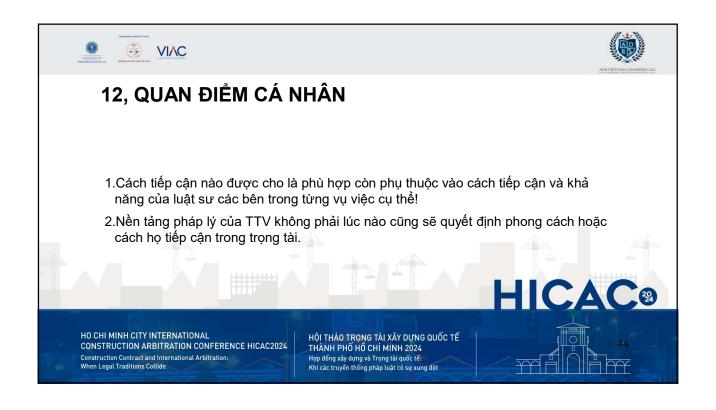




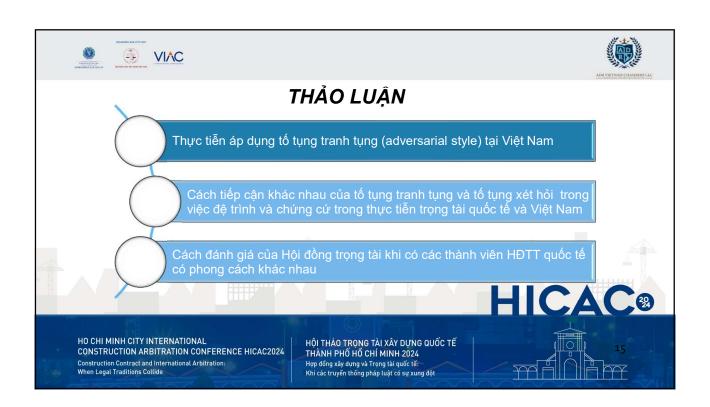


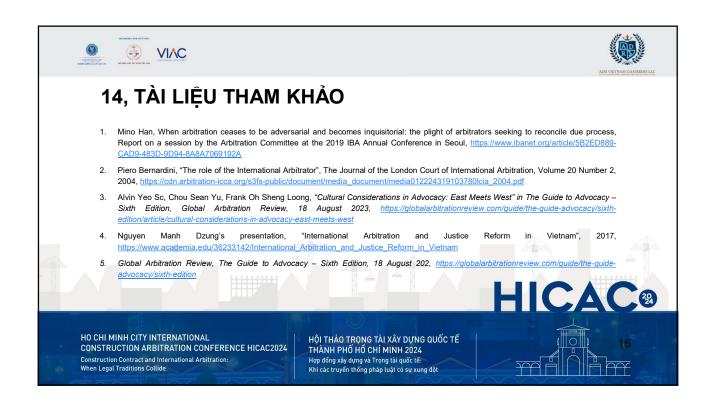






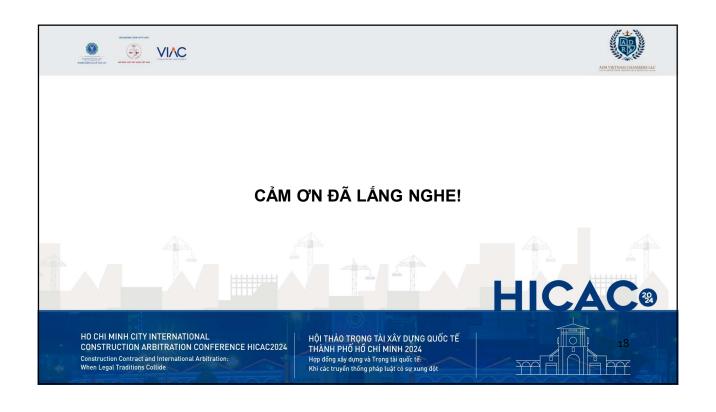






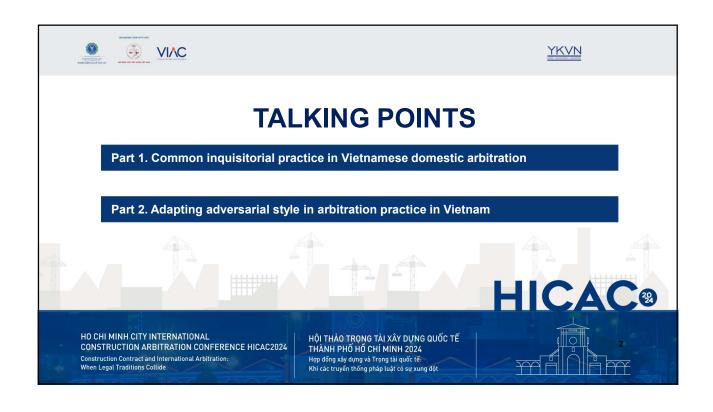




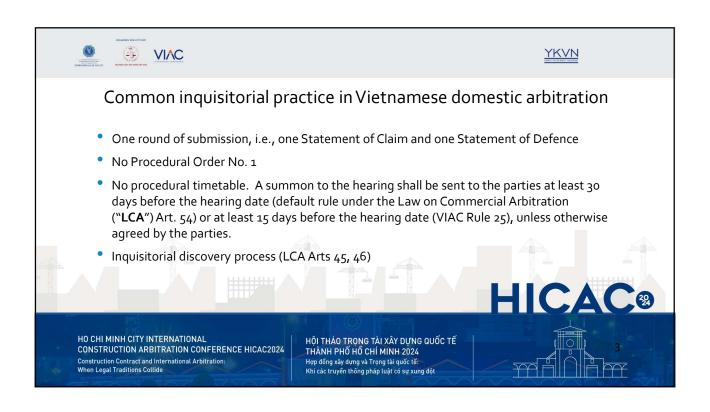


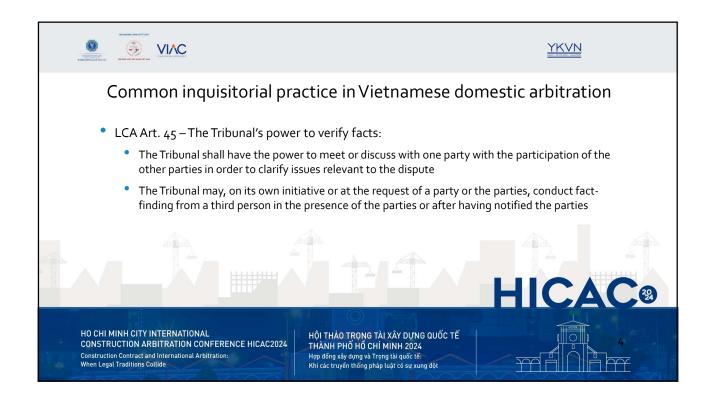
























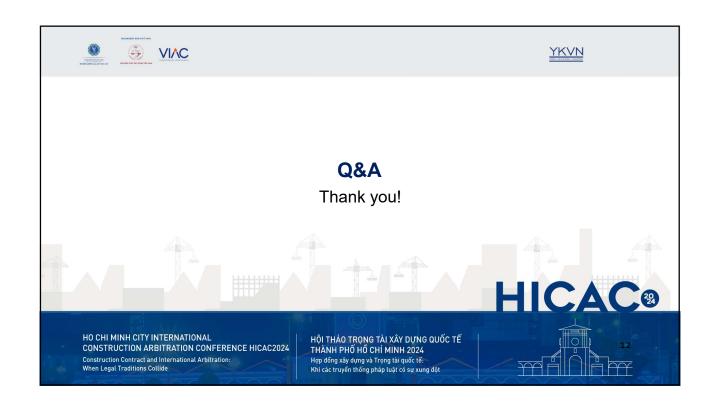






















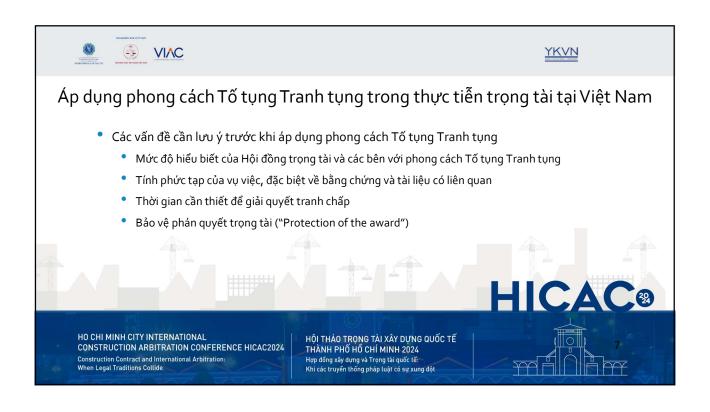


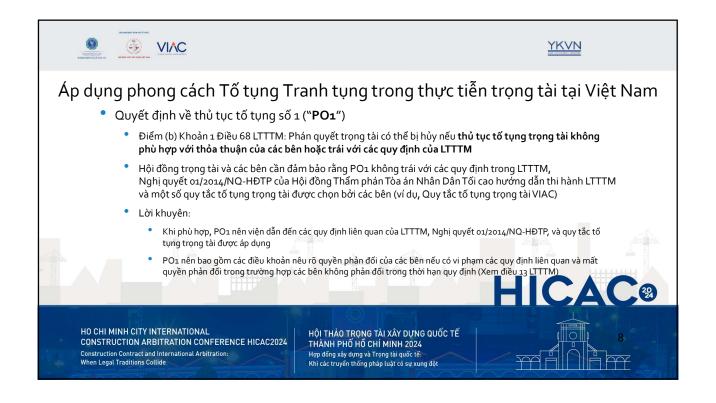




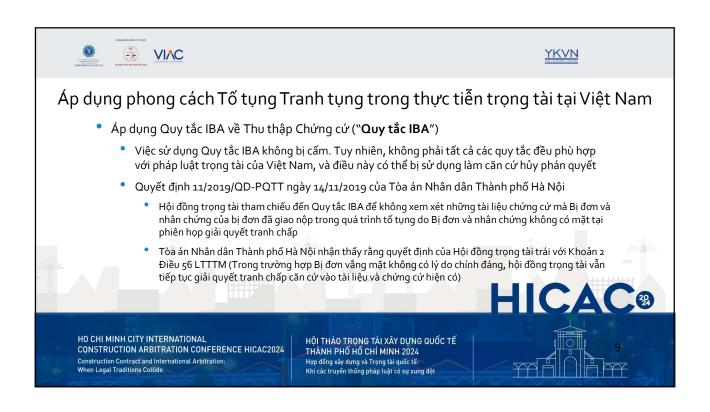


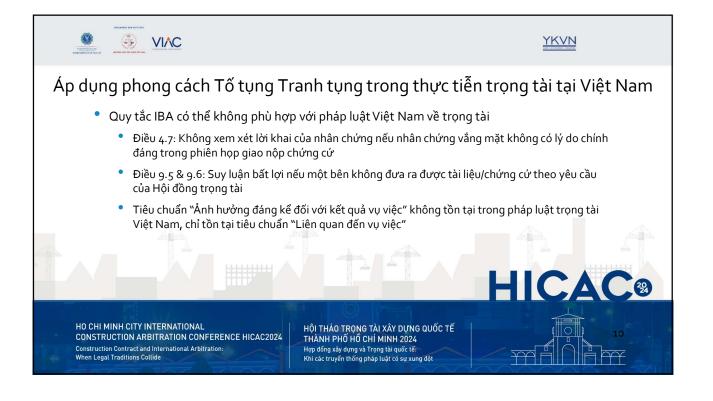






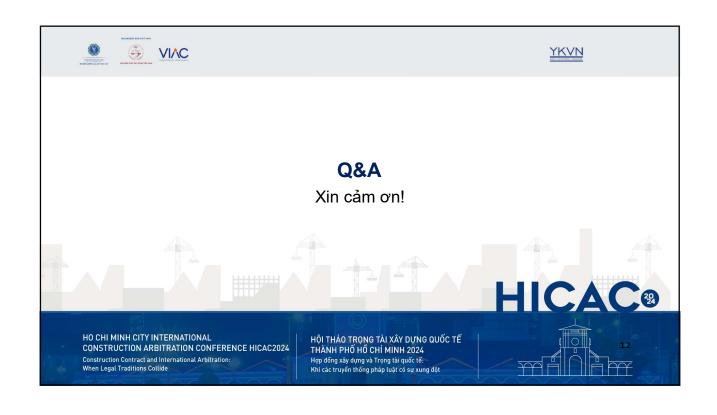
























The "international rules" on the taking of evidence

What is evidence?

- Essentially, material that a party provides the Tribunal to support facts asserted
- Documentary evidence / witness evidence (factual / expert)

What are the rules of evidence in international arbitration?

- Rules of evidence are generally governed by the law of the seat (or the law governing the arbitration)
- · The law governing the arbitration is usually flexible on issues of evidence
- Institutional rules also provide the Tribunal with discretion
- The IBA Rules on the Taking of Evidence in International Arbitration ("IBA Rules") provides
 general guidelines regarding evidential issues and is widely used

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Standard practice in international arbitration

IBA Rules are meant to harmonise different legal traditions and be applied flexibly Preamble

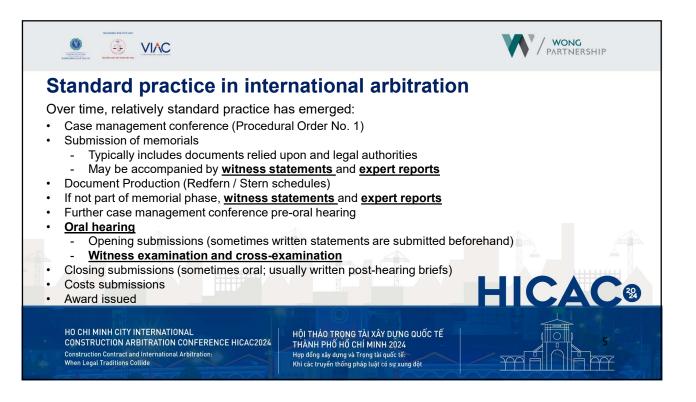
- 1. These IBA Rules on the Taking of Evidence in International Arbitration are **intended to provide an efficient**, **economical and fair process** for the taking of evidence in international arbitrations, particularly those between Parties from **different legal traditions**. They are designed to supplement the legal provisions and the institutional, ad hoc or other rules that apply to the conduct of the arbitration.
- 2. Parties and Arbitral Tribunals may adopt the IBA Rules of Evidence, in whole or in part, to govern arbitration proceedings, or they may vary them or use them as guidelines in developing their own procedures. The Rules are not intended to limit the flexibility that is inherent in, and an advantage of, international arbitration, and Parties and Arbitral Tribunals are free to adapt them to the particular circumstances of each arbitration.

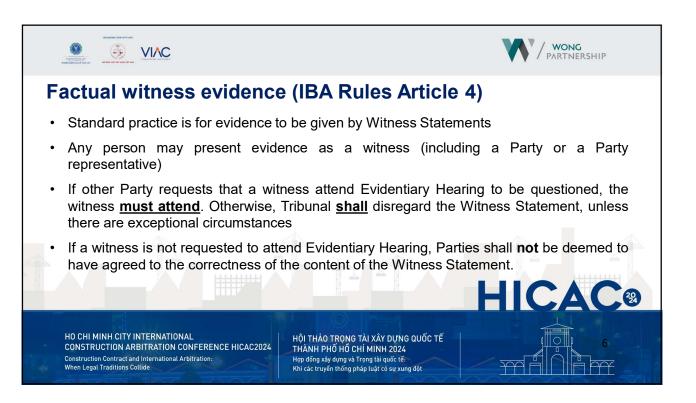
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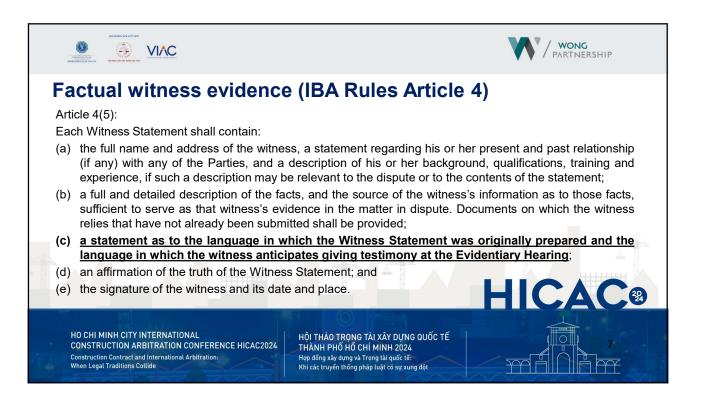


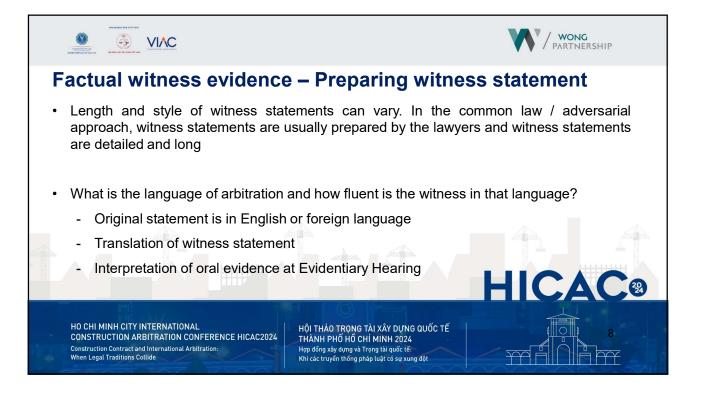




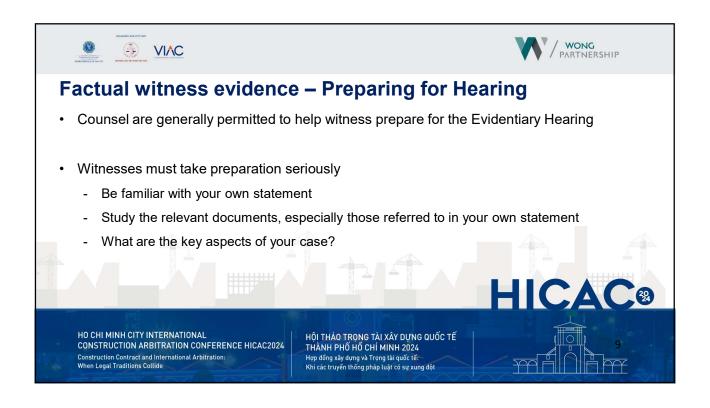


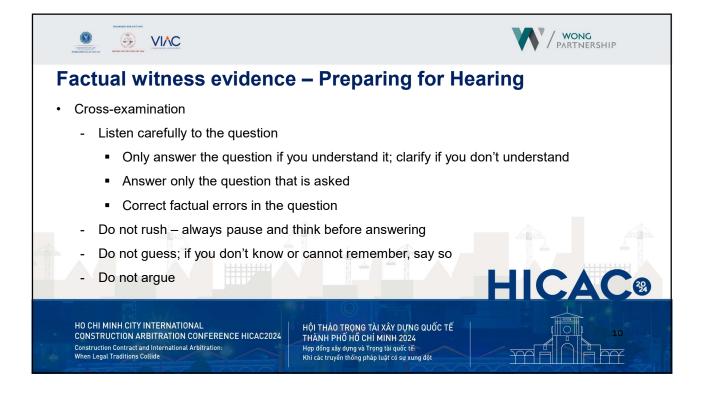








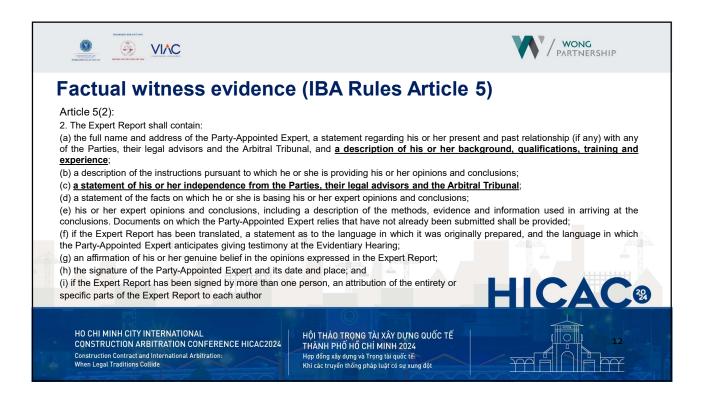








Khi các truyền thống pháp luật có sự xung đột

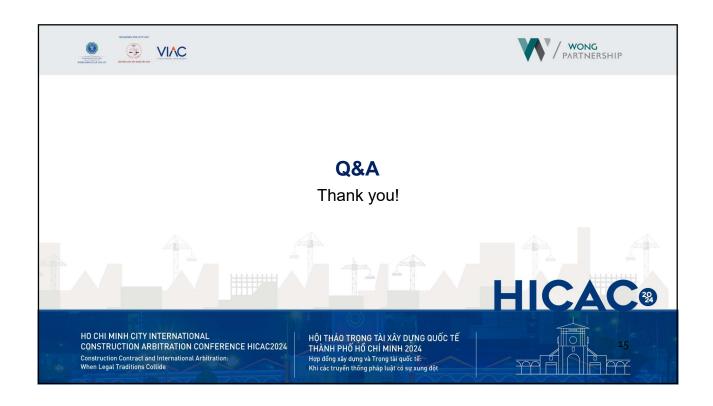






















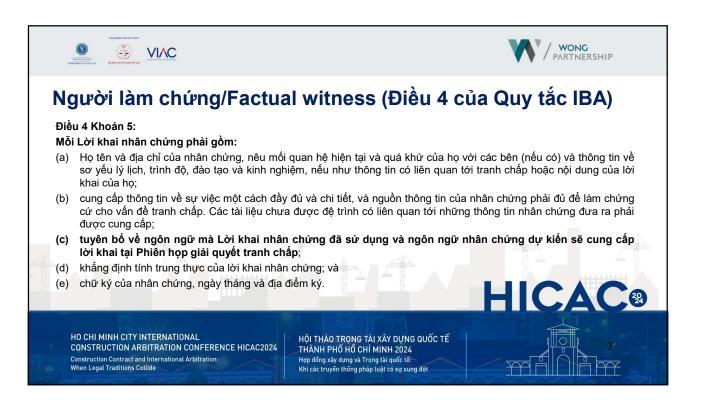
























Khi các truyền thống pháp luật có sự xung đột













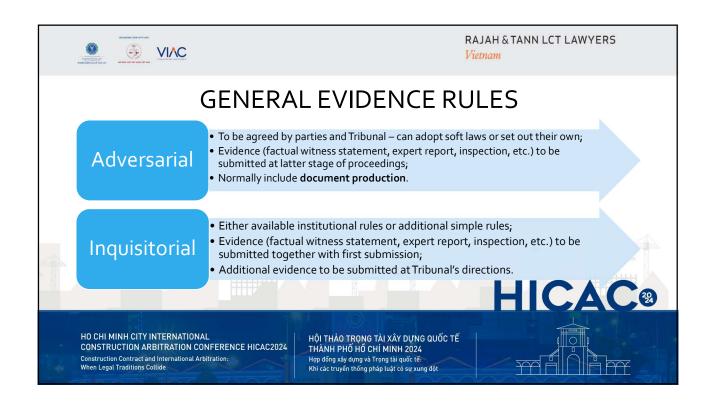




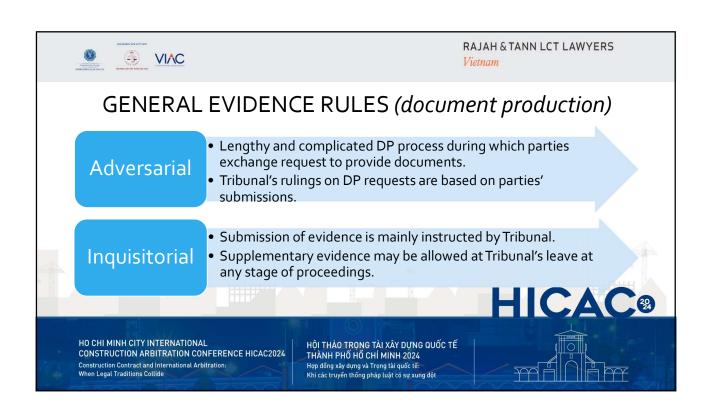


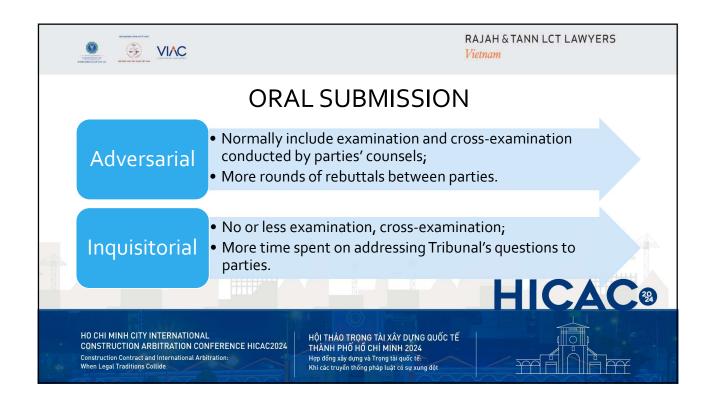




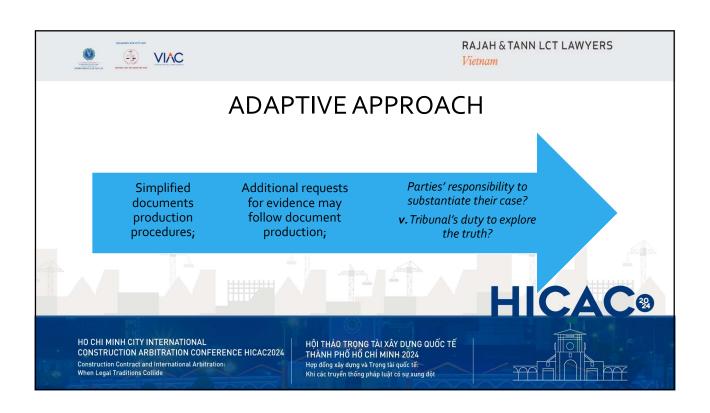


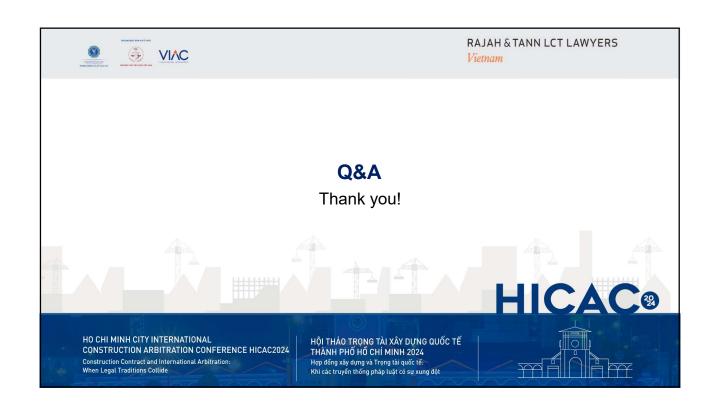






















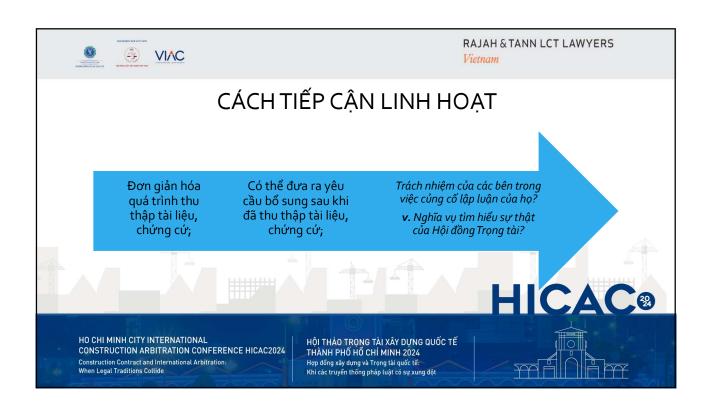


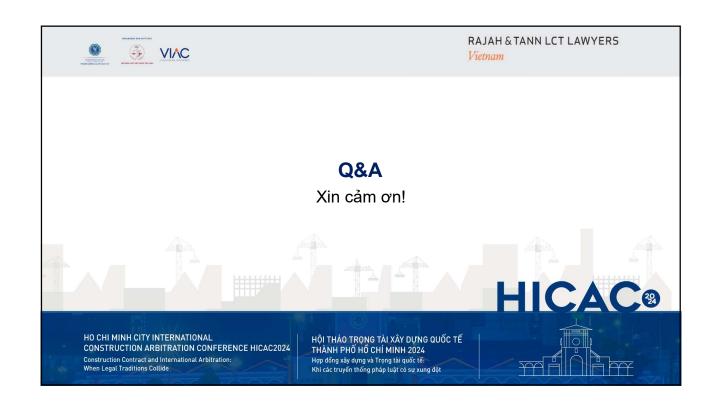


















CONFERENCE ROOM

08:30 - 12:00

Section C: Technical Experts In Construction Arbitration - By SCLVN

• 08:30-10:00

Panel C1

Practical tips for Tribunals on using Tribunal-Appointed Experts in Civil Law Jurisdictions



Moderator
Hung Le
Managing Partner at
CNC Counsel
Vice Chairman of SCLVN



Speaker
Samuel Widdowson
Partner at Accuracy



Speaker

Zheng Bao Qiang

Delay Expert at HKA



Speaker
Le Quang Tam
Vice Director of Construction
Inspection Center, CONINCO

• 10:00 - 10:30

• 10:30 -12:00

BreakPanel C2

Practical tips for Parties on using Party-Appointed Experts in Common Law Jurisdictions



Moderator
Peter Scott
Caldwell
Member of the DRBF
Region 2 Board
of Directors



Sezgin Ozbilgin

Head of Delay Expert Services
Asia at CCi



Speaker
Amit Garg
Managing Director at Secretariat



Lynda Lim

Managing Director of REX C Expert

& Disoute Services



Speaker
Prateek Jain
Partner- Delay Expert, Masin

26 04

CAMELLIA ROOM

08:30 - 12:00

Section D: Third Party In Arbitration Proceeding (By Faculty Of International Law- HCMULaw)

• 08:30-10:00

Panel D1

Extension of Arbitration to Non-Signatory Parties to the Arbitration Agreement



Moderator Nguyen Thi Lan Huong

Deputy Head of the Department of International Trade Law Faculty of International Law Ho Chi Minh City University of Law



Dr.Le Nguyen Gia Thien

Deputy Dean of the Faculty of Law University of Economics and Law Vietnam National University - HCMC



Speaker
Sanghoon Han
Partner, Lee & Ko



Duong Hoang

Deputy Counsel, Singapore International Arbitration Centre (SIAC)



Speaker
Amanda Lees
International Arbitration
Partner at King & Wood

Mallesons

• 10:00 - 10:30

• 10:30 -12:00

of Law

Break

Panel D2

Joinder and Consolidation in Construction Arbitration



Moderator
Dr.
Nguyen Thi Hoa
Faculty of International Law
Ho Chi Minh City University



Speaker
Kim Rosenberg
Partner at Freshfields
Bruckhaus Deringer



Speaker
Janice Cheng
Partner at Hogan Lovells



Speaker

Dr. Nguyen Thi Thu Trang

Special Arbitration Counsel in

Dzungsrt & Associates LLC – Hanoi Office













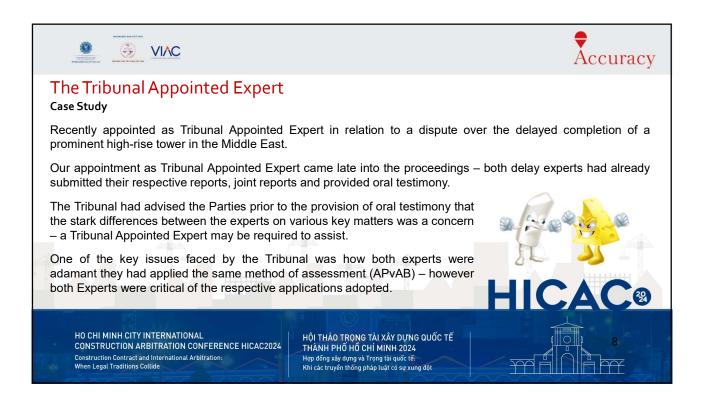






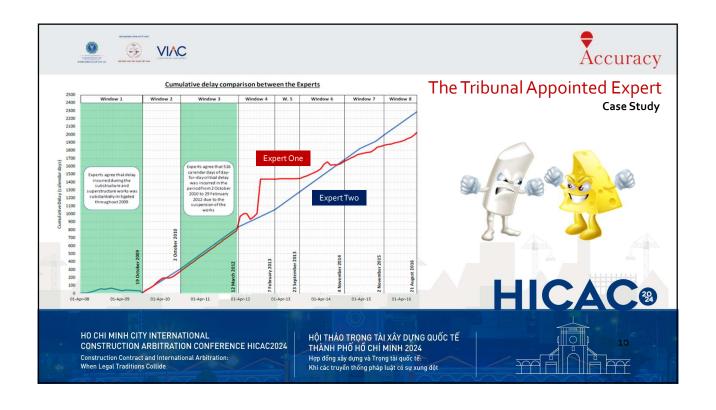






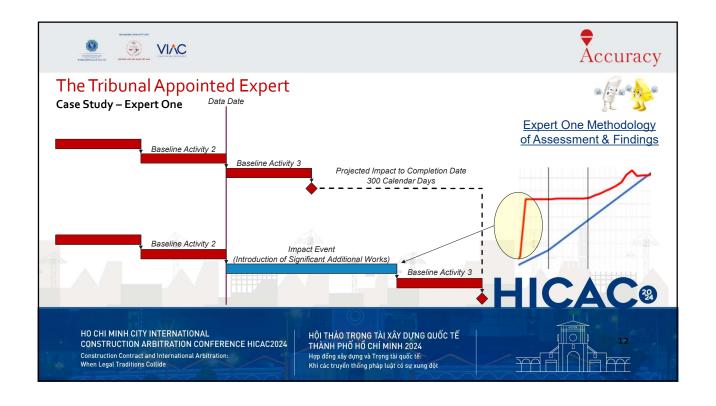
















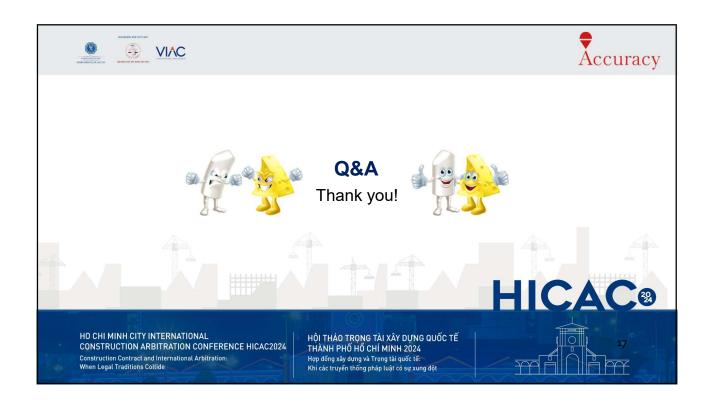












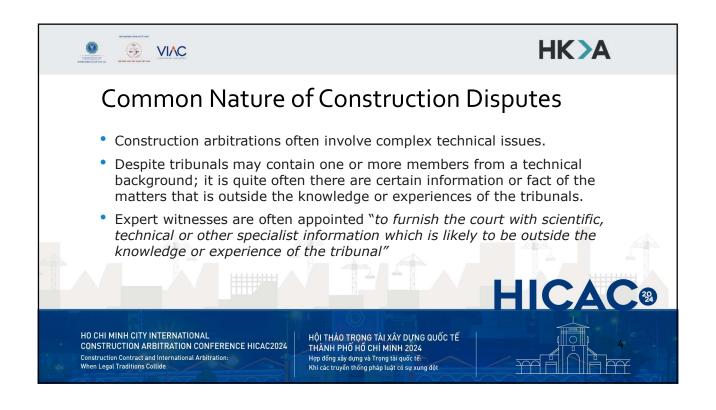




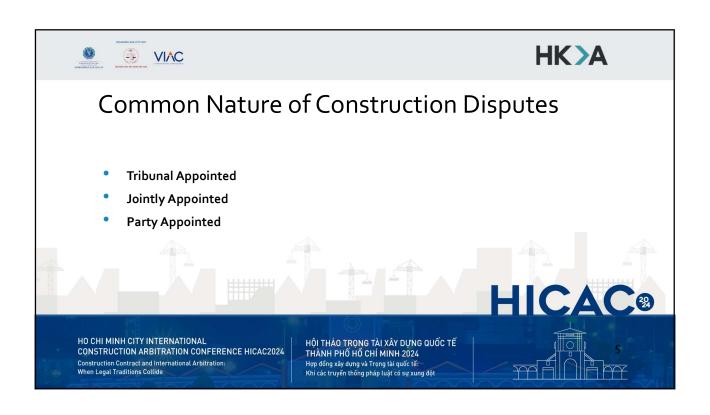


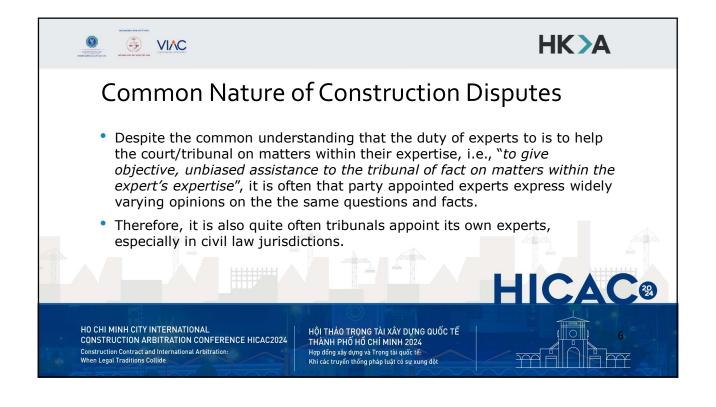




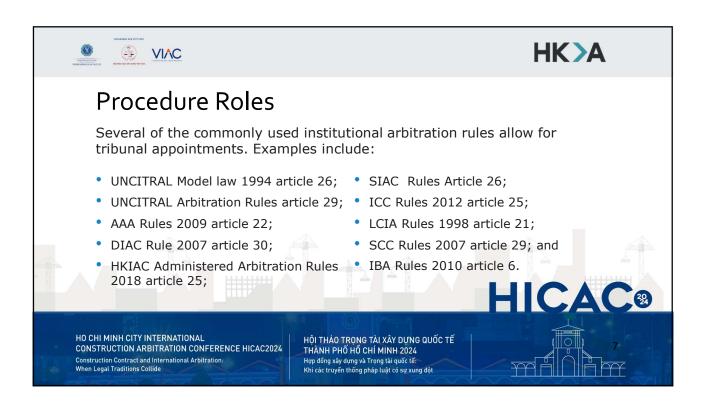


















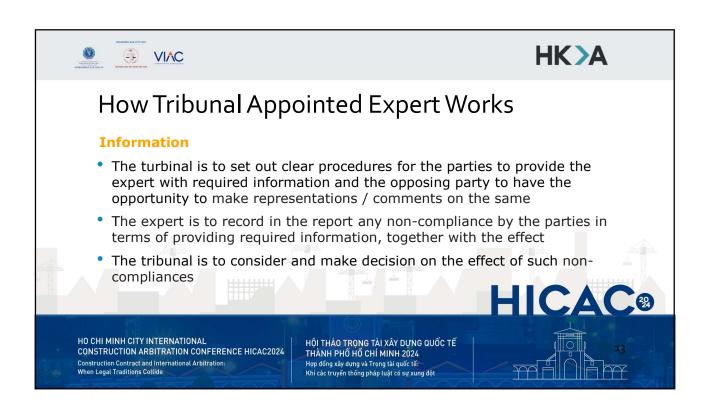


















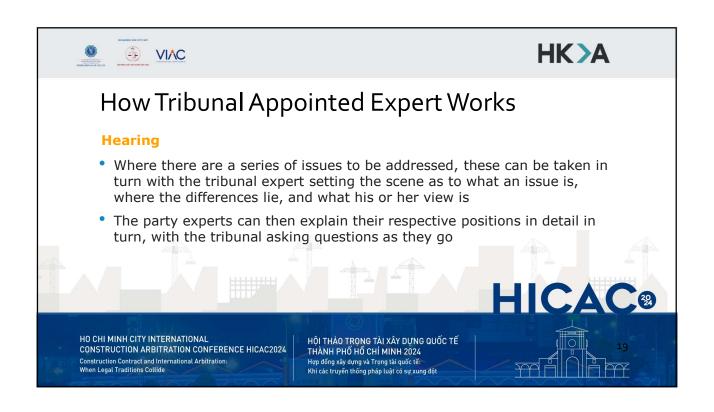






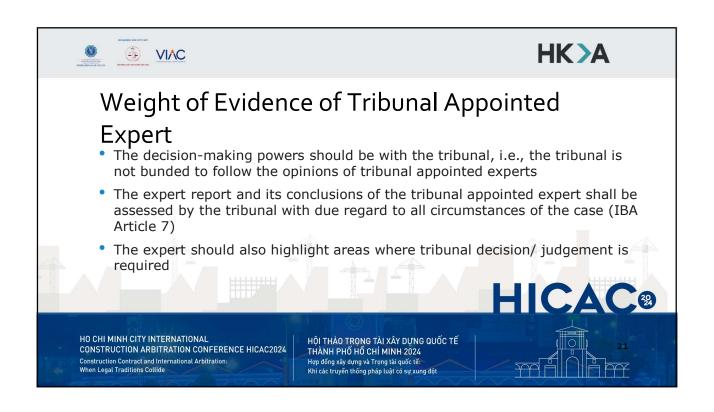


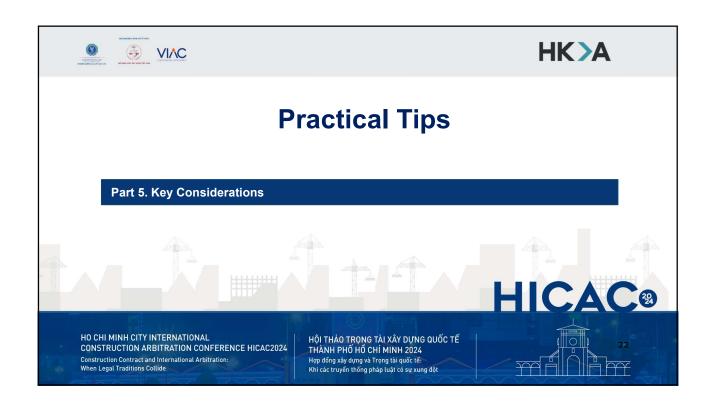






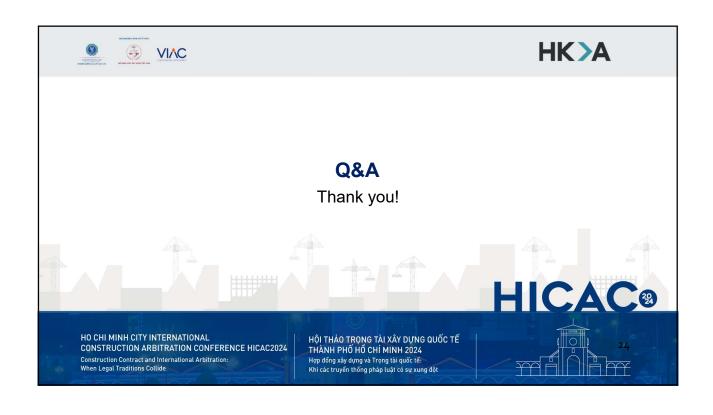


































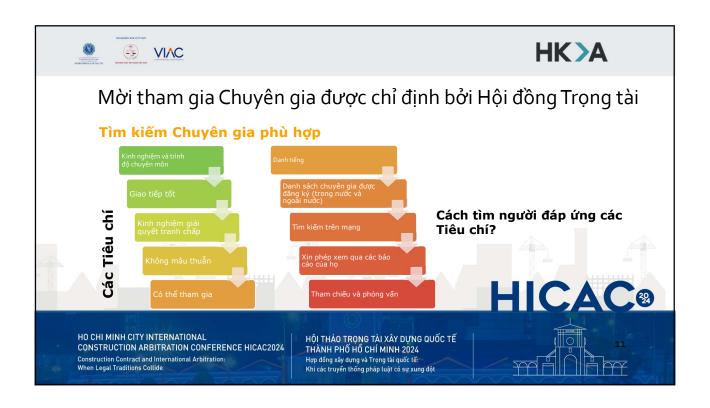




































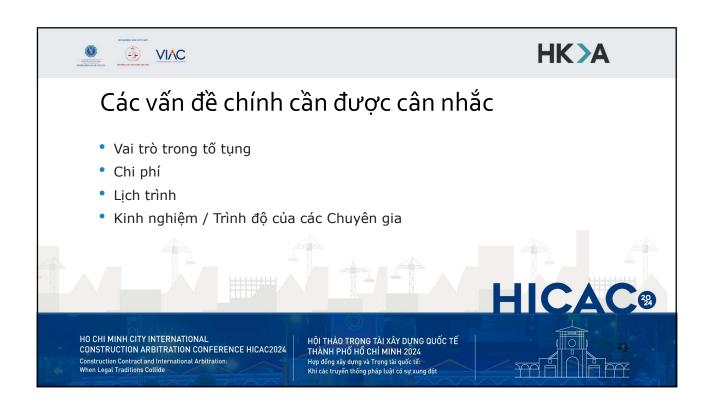








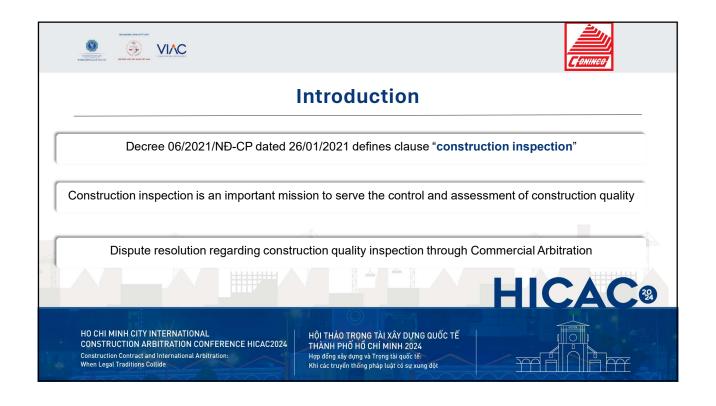




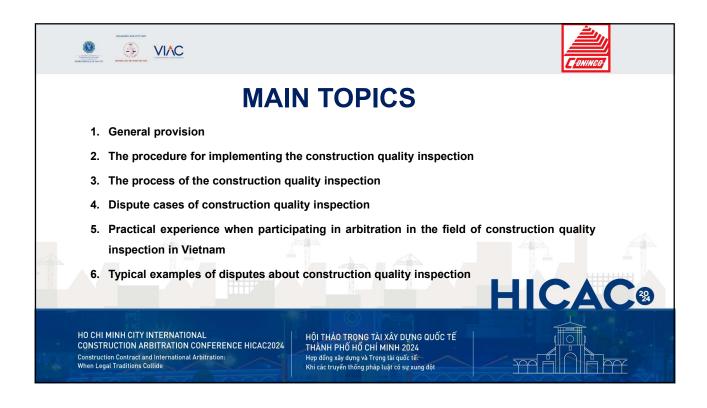


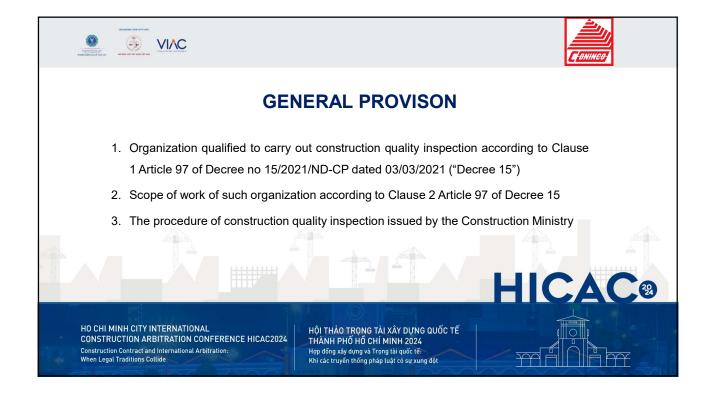






























PRACTICAL EXPERIENCE WHEN PARTICIPATING IN ARBITRATION (2)

- > Some experience in construction quality inspection (2)
- For underground projects that cannot be inspected, quality management records must be carefully reviewed as a basis for arbitration;
- Legal regulations lack detail, especially for projects that combine standards from many countries or overlap or conflict between Ministries;
- Arbitration often occurs when there is a request from a competent authority, court, police, a project that affects the quality of neighboring projects, or construction quality inspection disputes between the engineer and the contractors.

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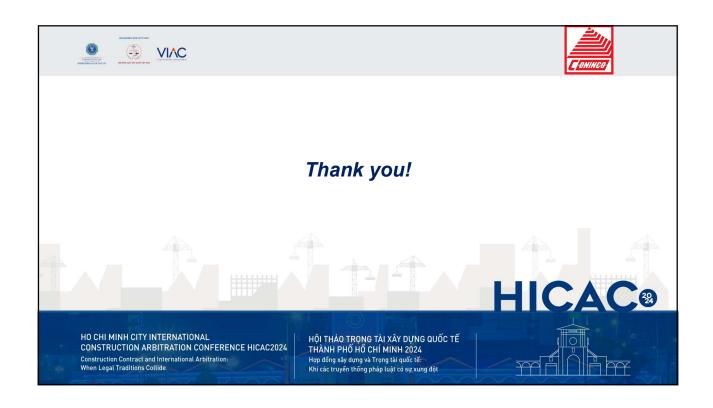
TYPICAL EXAMPLES OF DISPUTES ABOUT CONSTRUCTION QUALITY INSPECTION

- ➤ Project dispute regarding construction quality inspection between the employer and the Korean construction supervision consultant:
- 1. Dispute between the employer and the contractor.
- 2. Dispute between the employer, construction supervision consultant and design consultant.

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NỘI DUNG CHÍNH

- 1. QUY ĐỊNH CHUNG
- 2. TRÌNH TỰ THỰC HIỆN KIỂM ĐỊNH CHẤT LƯỢNG CÔNG TRÌNH
- 3. QUY TRÌNH KIỂM ĐỊNH CHẤT LƯỢNG CÔNG TRÌNH
- 4. CÁC TRƯỜNG HỢP TRANH CHẤP KHI KIỂM ĐỊNH CHẤT LƯỢNG CÔNG TRÌNH
- 5. KINH NGHIỆM THỰC TIẾN KHI THAM GIA TRỌNG TÀI TRONG LĨNH VỰC KIỂM ĐỊNH CHẤT LƯƠNG XÂY DỰNG CÔNG TRÌNH
- 6. VÍ DỤ ĐIỂN HÌNH TRONG TRANH CHẤP XÂY DỰNG VỀ KIỂM ĐỊNH CHẤT LƯỢNG CÔNG TRÌNH



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QUY ĐỊNH CHUNG

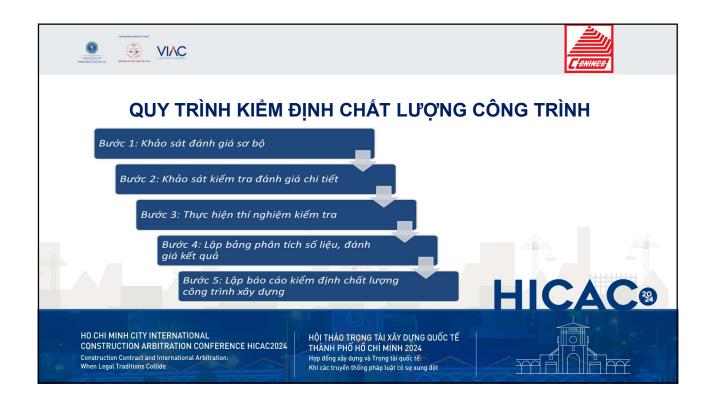
- 1. Tổ chức đủ điều kiện thực hiện kiểm định chất lượng công trình theo Khoản 1 Điều 97 Nghị định số 15/2021/NĐ-CP ngày 03/03/2021 ("Nghị định 15").
- 2. Phạm vi hoạt động của tổ chức theo Khoản 2 Điều 97 Nghị định 15.
- 3. Quy trình kiểm định chất lượng công trình do Bộ Xây dựng ban hành.



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CÁC TRƯỜNG HỢP TRANH CHẤP CHẤT LƯỢNG CÔNG TRÌNH XÂY DỰNG

- > Tranh chấp về kiểm định chất lượng công trình xây dựng xảy ra khi:
- 1. Có ý kiến đánh giá khác nhau về chất lượng sản phẩm, bộ phận công trình và công trình xây dựng, biện pháp khắc phục khiếm khuyết về chất lượng công trình.
- 2. Giữa các chủ thể tham gia xây dựng công trình hoặc giữa các chủ thể này với chủ sở hữu hoặc người quản lý, sử dụng các công trình xây dựng lân cận và các bên có liên quan.



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KINH NGHIỆM THỰC TIẾN KHI THAM GIA TRỌNG TÀI (1)

- Một số kinh nghiệm trong công tác kiểm định chất lượng:
- Độc lập hoàn toàn với các chủ thể liên quan đến dự án;
- Khách quan và trung thực;
- Tuân thủ tiêu chuẩn kỹ thuật chuyên ngành và yêu cầu kỹ thuật của dự án;
- Một số dự án thiếu hồ sơ quản lý chất lượng nên gây rất nhiều khó khăn cho trọng tài, thậm chí có những dự án không đủ cơ sở làm căn cứ đưa ra trọng tài;

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KINH NGHIỆM THỰC TIỂN KHI THAM GIA TRỌNG TÀI (2)

- Một số kinh nghiệm trong công tác kiểm định chất lượng (2):
- Đối với phầm ngầm của dự án không thể kiểm định được thì phải xem xét kỹ hồ sơ quản lý chất lượng để làm căn cứ trọng tài;
- Các quy định pháp lý còn thiếu chi tiết, nhất là các dự án có áp dụng kết hợp tiêu chuẩn của nhiều nước hoặc chồng chéo, xung đột giữa các Bộ ngành.
- Công tác trọng tài thường xảy ra khi có yêu cầu của cơ quan có thẩm quyền, tòa án, công an, dự án gây ảnh hưởng chất lượng các dự án lân cận, tranh chấp chất lượng của Chủ đầu tư với Nhà thầu thi công hoặc Nhà thầu tư vấn.

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VÍ DỤ ĐIỂN HÌNH TRONG TRANH CHẤP VỀ CHẤT LƯỢNG CÔNG TRÌNH XÂY DỰNG

- Dự án tranh chấp về chất lượng công trình xây dựng giữa Chủ đầu và Nhà thầu tư vấn Hàn Quốc:
- 1. Tranh chấp giữa Chủ đầu tư và Nhà thầu thi công
- 2. Tranh chấp giữa Chủ đầu tư, Tư vấn thiết kế và Tư vấn giám sát



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Section C | Panel 2





INDEX: Question and Answers (continued...)

- Q6: Going outside expertise to support client's case not examining the fact / evidence, provide legal opinion / contract advice i.e. advocating client's case?
- Q7: What are the most effective approach to closing extensive gaps in finding of the party-appointed expert witness?
- Q8: In navigating the use of party-appointed experts within common law jurisdictions, what strategies can
 parties employ to address the challenges expert faces in refraining from offering legal / ultimate conclusion?
- Q9: How should parties evaluate the conflicts of interest when selecting a party-appointed expert witness?
- Q10: Lack of independence hired gun leading to apparent bias?
 Expert totally agreed with the Client case with being perceived bias?
 What about expert fundamentally disagree with client's case?



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QI: When selecting an expert, what are the key aspects that parties should look out for?

* Expertise & Technical Ability:

A minimum requirement is that the expert possesses expertise relevant to the subject matter and the technical skills necessary to carry out the required tasks effectively.

Effective Presentation & Communication Skills:

- Not sufficient to have only technical skills.
- Good testimony involves simplifying complex concepts for the tribunal's understanding.
- Being quick on the feet to respond to counsel's and tribunal's questions.
- The use of visual aids such as illustrative graphics and charts are extremely helpful.
- Confidence & ability to withstand aggressive cross-examination.

* Availability:

Experts may have multiple engagements, so it's crucial to check their availability to allocate their time, and whether they have a sufficient team size and composition to comply with tight deadlines.

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Section C | Panel 2





QI: When selecting an expert, what are the key aspects that parties should look out for? (continued)

* Reputation & Experience:

Ask for references. Consider whether the expert has prior testimony experience with seasoned counsel, as well as prior experience with the Tribunal(s) or opposing counsel(s). Look for prior published opinions.

❖ Fees is a touchy subject:

While controlling the fees is important, it's important not to look for the cheapest, lump sum fee proposal. Instead, consider the overall value provided by the expert's services, recognizing that quality comes at a cost.

Lastly, conflict-free:

Clients often employ experts they have used, or consultants on the same projects.

It's essential to ensure that the chosen expert is free from conflicts of interest, maintaining impartiality and credibility throughout the process.

Useful guidelines:

TAE & IBA Rules on the Taking of Evidence in International Arbitration
CIArb Protocol for the Use of Party-Appointed Experts in International Arbitration



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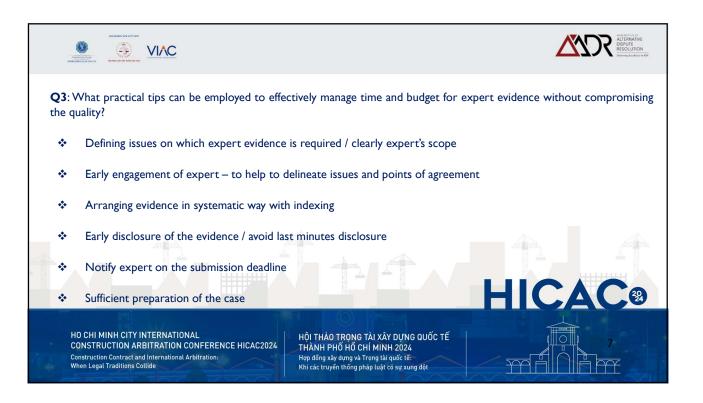
Q2: Expert's fee based on contingency / success fee based?

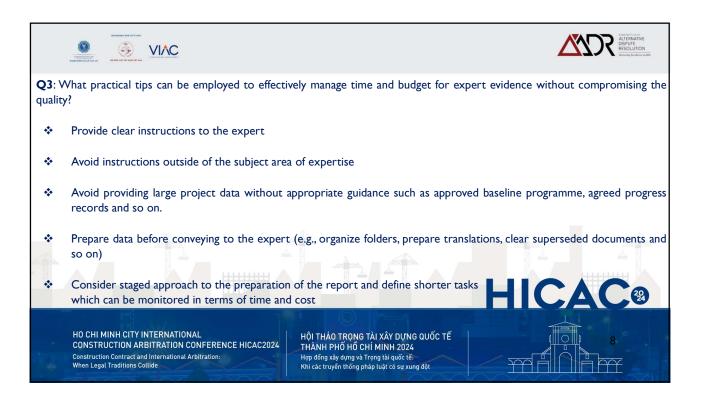
- Contingency fees expert having financial interest to the outcome of the case as it must increase pressures on Expert Witnesses to give evidence that favours their client. Even if Expert Witness resists this pressure, his independence may still be compromised due to this payment arrangement
- The Academy of Expert's Judicial Committee such fees arrangement is incompatible with Experts' duty of independence and impartiality
- * TAE given initial guideline in 1995 and further guideline in 1998 which reaffirm earlier guideline
- TAE encourages expert in 'Expert's Declaration' to declare that the expert was not working on a contingent fee basis and its restatement in open court

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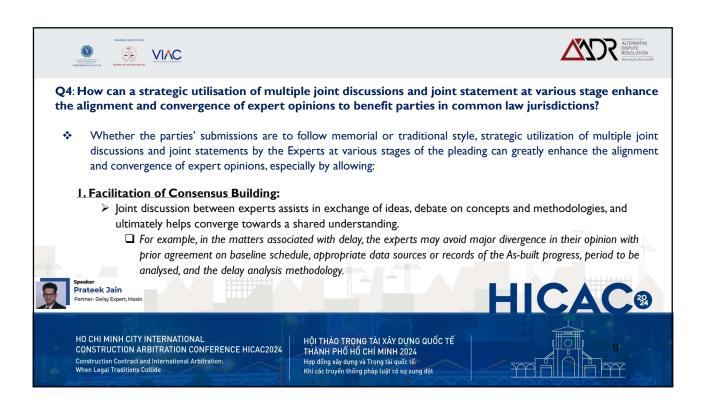


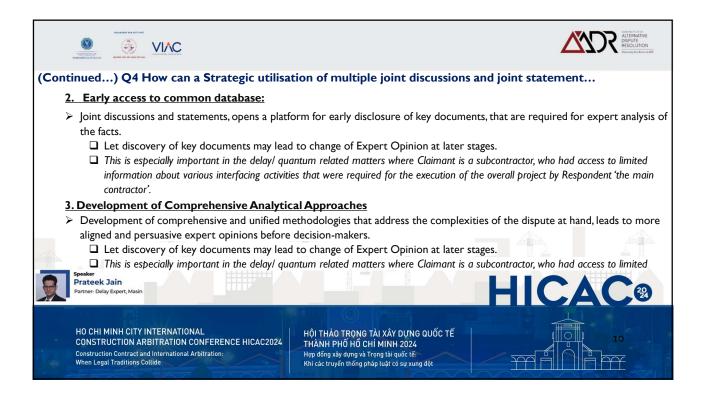




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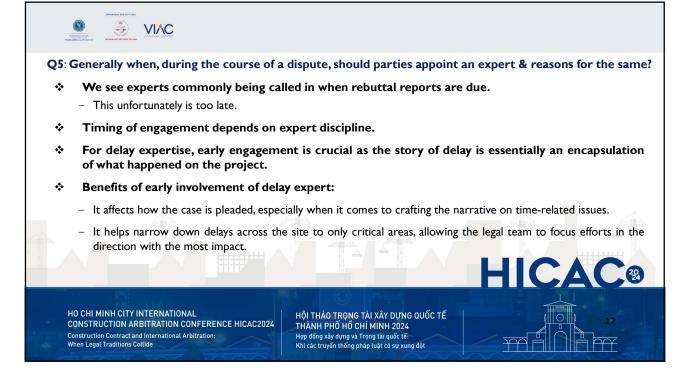
















Q5: Generally when, during the course of a dispute, should parties appoint an expert & reasons for the same? (continued)

- * Benefits of early involvement of delay expert: (continued)
 - It aids in identifying aspects where technical evidence and factual input may be needed, because:
 - o Obtaining technical evidence is complex and time-consuming.
 - o Assembling factual input requires tremendous effort in collecting the documents, formulating data analysis and coordinating with factual witnesses.
 - It provides an early objective assessment. Such an assessment:
 - o allows parties to introspectively evaluate its position, and
 - o sometimes facilitates settlement.
- * With regards to specific technical input, experts in such fields can be engaged a little later once there is greater clarity as to what questions they need to address.

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Q6: Going outside expertise to support client's case – not examining the fact / evidence, provide legal opinion / contract advice i.e. advocating client's case?

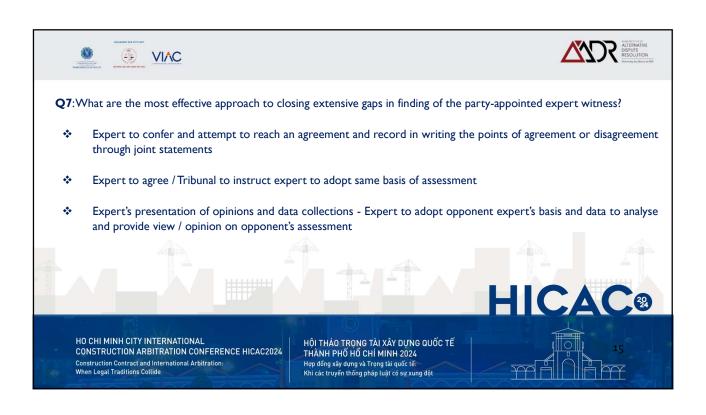
- Experts ignore evidence which is not helpful to their own party's case or consistently choose an interpretation or approach that gives their instructing party the benefit of doubt will inevitably run the risk that less weight will be attached to their evidence by the tribunal or that the evidence of the other expert will be preferred wholesale
- Assessment / analysis are facts / evidence based interview
- ❖ Avoid acting as advocates damaging client's case & expert's reputation
- Concede points where appropriate to do so
- Not stick rigidly to one fact scenario but be prepared to consider a range of possible outcomes depending Tribunal's findings on disputed issues
- neutral tone in report without conveying any comments / merits / strategy of the report

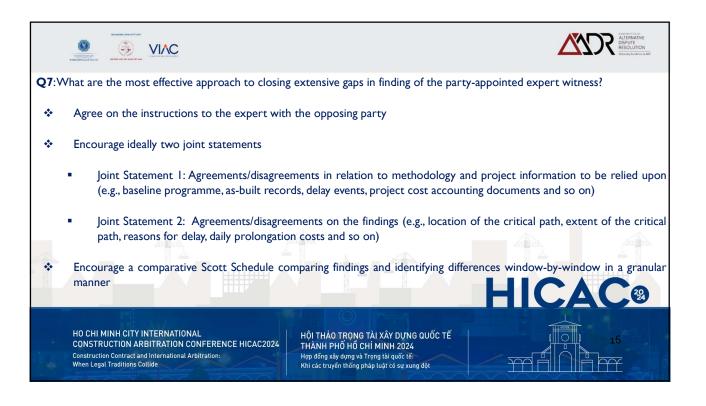
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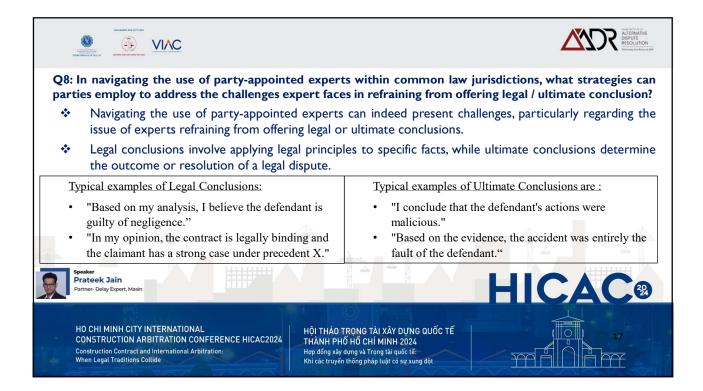
HỘI THẢO TRONG TÀI XÂY DỰNG QUỐC TẾ THÀNH PHỐ HỒ CHÍ MINH 2024 Hợp đồng xây dựng và Trọng tài quốc tế: Khi các truyền thống pháp luật có sự xung đột





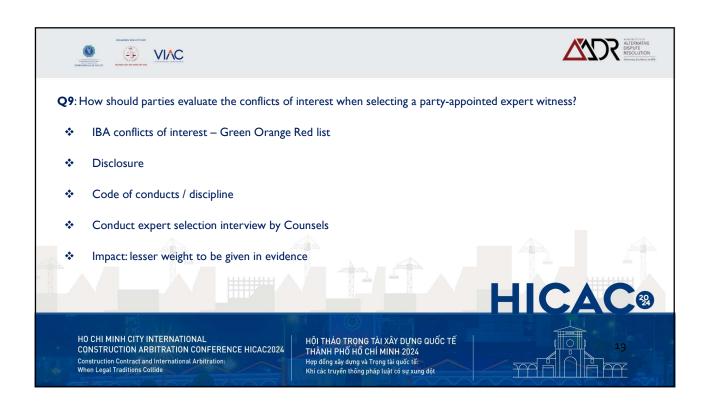


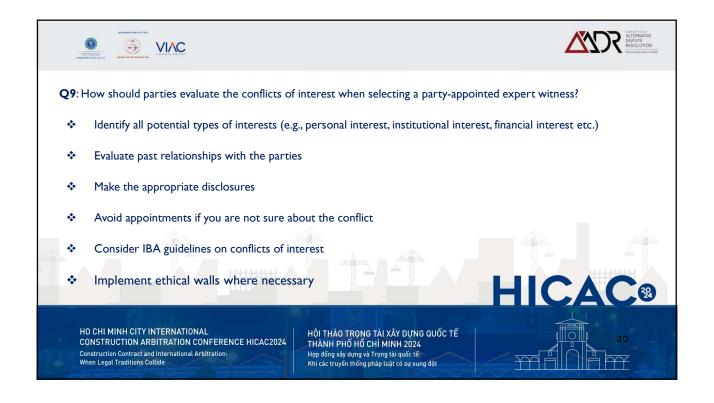




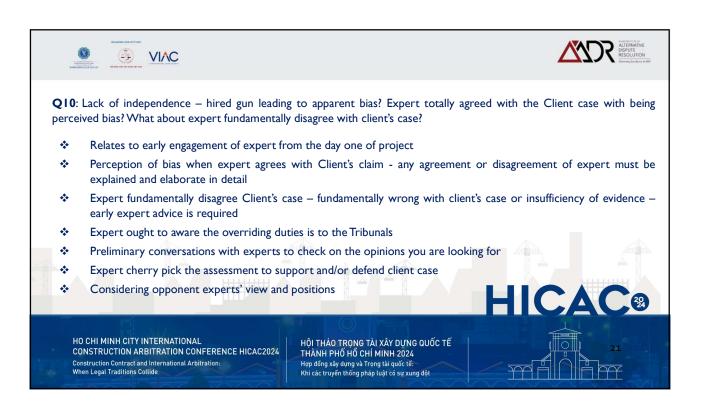


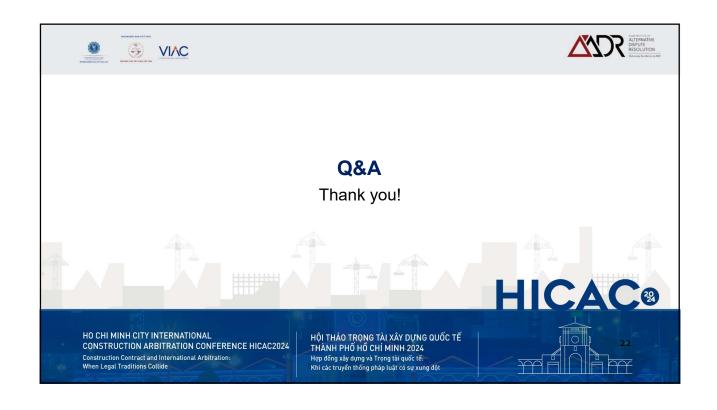






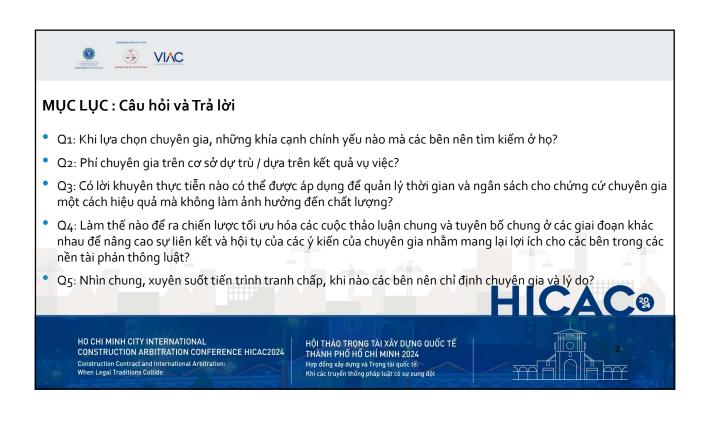
















MỤC LỤC: Câu hỏi và Trả lời (tiếp theo...)

- Q6: Bước ra khỏi chuyên môn để hỗ trợ vụ việc của khách hàng không đánh giá tình tiết / chứng cứ, cung cấp ý kiến pháp lý / tư vấn hợp đồng, chẳng hạn như để biện hộ cho vụ việc của khách hàng?
- Q7: Cách tiếp cận nào là hiệu quả nhất để thu hẹp khoảng trống mênh mông trong việc tìm kiếm các nhân chứng chuyên gia do các bên chọn?
- Q8: Khi tìm kiếm việc sử dụng các chuyên gia do các bên chọn trong các nền tài phán thông luật, những chiến lược gì mà các bên có thể vận dụng để giải quyết các thách thức mà chuyên gia gặp phải trong việc cố gắng không đưa ra kết luận pháp lý / cuối cùng?
- Q9: Làm thế nào để các bên đánh giá được xung đột lợi ích khi lựa chọn nhân chứng chuyên gia do mình chọn?
- Q10: Không độc lập kẻ cắp được thuê dẫn đến sự thiên vị rõ ràng? Chuyên gia đồng ý hoàn toàn với vụ việc của Khách hàng với sự thiên vị nhận thấy được Những vấn đề nào về cơ bản không được chuyên gia đồng ý với vụ việc của Khách hàng



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QI: Khi lựa chọn chuyên gia, những khía cạnh chính yếu nào mà các bên nên tìm kiếm ở họ?

Năng lực chuyên môn & kỹ thuật

Yêu cầu tối thiểu là chuyên gia phải có chuyên môn liên quan đến vấn đề và kỹ năng về kỹ thuật cần thiết để thực hiện các nhiệm vụ được giao một cách hiệu quả.

- Trình bày hiệu quả & Kỹ năng giao tiếp:
 - Chỉ có kỹ năng về kỹ thuật là chưa đủ.
 - Lời chứng tốt bao gồm việc đơn giản hóa các khái niệm phức tạp cho Hội đồng trọng tài hiểu được.
 - Nhanh nhẹn trong việc phản hồi các câu hỏi của cố vấn và hội đồng trọng tài.
 - Sử dụng các công cụ trực quan như đồ họa và biểu đồ minh họa là cực kỳ hữu ích.
 - Tự tin & khả năng chống chọi với những cuộc thẩm vấn chéo (cross-examination) có tính công kích cao.

Khả năng:

Các chuyên gia có thể có nhiều vụ việc, nên rất cần thiết phải kiểm tra khả năng phân bổ thời gian và khả năng huy động nguồn lực nhân sự của họ để tuân thủ các hạn chót quan trọng.

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Q1: Khi lựa chọn chuyên gia, những khía cạnh chính yếu nào mà các bên nên tìm kiếm ở họ? (tiếp theo)

Danh tiếng & Kinh nghiệm:

Yêu cầu các dẫn chiếu. Xem xét liệu chuyên gia có kinh nghiệm làm lời khai trước đây với những cố vấn dày dặn, cũng như kinh nghiệm trước đây với các Hội đồng trọng tài và cố vấn của đối thủ hay không. Tìm đến những ý kiến đã được ban hành trước đây.

Chi phí là một vấn đề tế nhị:

Kiểm soát chi phí là quan trọng, nhưng quan trọng không kém là không tìm đến những đề xuất báo phí rẻ nhất, trọn gói. Thay vào đó, xem xét giá trị tổng thể mà các dịch vụ chuyên gia mang đến, nhìn nhận được rằng chất lượng đi đôi với mức giá.

Cuối cùng, không có sự xung đột:

Khách hàng thường thuê những chuyên gia mà họ đã từng làm việc, hoặc những nhà tư vấn cho những dự án tương tự. Cần phải đảm bảo rằng chuyên gia được chọn không có bất cứ xung đột lợi ích nào, duy trì tính khách quan và uy tín xuyên suốt quá trình.

Những bộ hướng dẫn hữu dụng:

Bộ Quy tắc TAE & IBA về Thu thập Chứng cứ trong Trọng tài Quốc tế Nghị định thư của CiArb về Sử dụng Chuyên gia do các Bên chọn trong Trọng tài Quốc tế



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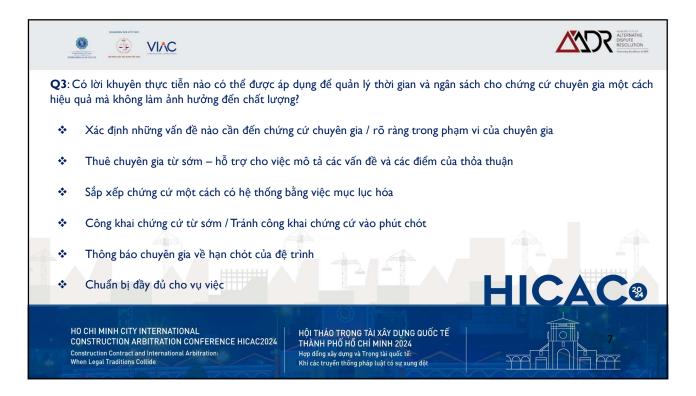
Q2: Phí chuyên gia trên cơ sở dự trù / dựa trên kết quả vụ việc?

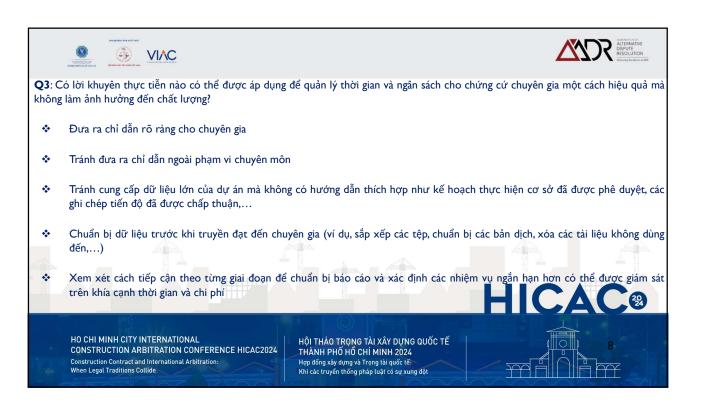
- Phí dự trù chuyên gia có lợi ích tài chính đối với đầu ra của vụ việc vì phải có sự gia tăng áp lực lên Chứng cứ Chuyên gia để cung cấp chứng cứ có lợi cho khách hàng của mình. Ngay cả khi Chứng cứ Chuyên gia chống lại áp lực này, tính độc lập của nó vẫn có thể bị ảnh hưởng bởi vấn đề thu xếp thanh toán cho phí chuyên gia này.
- ❖ Ủy ban Tư Pháp của Học viện Chuyên gia (The Academy of Expert's Judicial Committee) sự thu xếp chi phí như vậy không phù hợp với nhiệm vụ độc lập và khách quan của Chuyên gia.
- TAE đưa ra hướng dẫn ban đầu vào năm 1995 và hướng dẫn thêm vào năm 1998 để khẳng định lại hướng dẫn trước đó.
- * TAE khuyến khích chuyên gia theo 'Bản tuyên bố của Chuyên gia' tuyên bố rằng chuyên gia không làm việc trên cơ sở phí dự trù và trình bày lại điều đó vào phiên tòa công khai.

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Q5: Nhìn chung, xuyên suốt tiến trình tranh chấp, khi nào các bên nên chỉ định chuyên gia và lý do?

- Nhận thấy các chuyên gia thường được mời đến khi đến hạn báo cáo bác bỏ.
 - Không may thay là đã quá trễ.
- Tính toán về thời gian hợp tác tùy thuộc vào tính kỷ luật của chuyên gia.
- Đối với chuyên môn về chậm trễ, hợp tác từ sớm là rất quan trọng bởi vì dòng diễn biến của chậm trễ về cơ bản là sự tóm lược về những gì đã xảy ra ở dự án.
- Lợi ích của việc tham gia sớm của chuyên gia chậm trễ:
 - Điều này ảnh hưởng đến cách tranh tụng vụ việc, đặc biệt khi xây dựng câu chuyện về vấn đề thời gian.
 - Điều này giúp thu hẹp các chậm trễ trên toàn công trường xuống chỉ còn ở những khu vực quan trọng, giúp đội pháp lý tập trung nỗ lực vào hướng có tác động lớn nhất.

HICAC

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Q5: Nhìn chung, xuyên suốt tiến trình tranh chấp, khi nào các bên nên chỉ định chuyên gia và lý do? (tiếp theo)

- Lợi ích của việc tham gia sớm của chuyên gia chậm trễ: (tiếp theo)
 - Điều này hỗ trợ trong việc xác định các khía cạnh có thể cần chứng cứ kỹ thuật và đầu vào về tình tiết, bởi vì:
 - o Có được chứng cứ kỹ thuật rất phức tạp và tốn thời gian.
 - o Tập hợp những đầu vào về tình tiết yêu cầu nỗ lực rất lớn trong việc thu thập các tài liệu, hệ thống hóa phân tích dữ liệu và phối hợp với các nhân chứng về tình tiết.
 - Điều này tạo nên đánh giá khách quan ban đầu:
 - o để các bên tự đánh giá vị thế của mình, và
 - o đôi khi thuận lợi hóa cho việc giải quyết tranh chấp.
- Về đầu vào kỹ thuật cụ thể, các chuyên gia trong các lĩnh vực như vậy có thể tham gia muộn hơn một chút khi đã hiểu rõ hơn về những câu hỏi họ cần phải giải quyết.

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Q6: Bước ra khỏi chuyên môn để hỗ trợ vụ việc của khách hàng – không đánh giá tình tiết / chứng cứ, cung cấp ý kiến pháp lý / tư vấn hợp đồng, chẳng hạn như để biện hộ cho vụ việc của khách hàng?

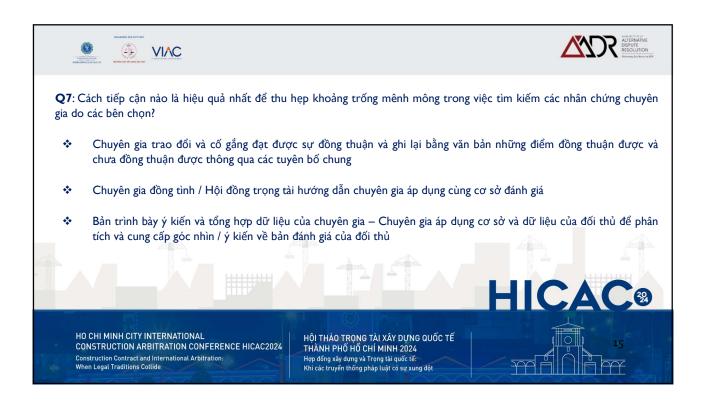
- Các chuyên gia bỏ qua những chứng cứ không hữu dụng đối với vụ việc của khách hàng mình hoặc nhất quán chọn một cách diễn giải hoặc tiếp cận làm cho khách hàng tin vào những điều còn đáng nghi mà điều đó chắc chắn có nguy cơ làm chứng cứ của họ trở nên ít tính thuyết phục đi trong mắt hội đồng trọng tài hoặc làm chứng cứ của chuyên gia khác được ưu tiên hơn về tổng thể
- Đánh giá / phân tích dựa trên tình tiết / chứng cứ phỏng vấn
- Không hành động như một luật sư tổn hại đến vụ việc của khách hàng & danh tiếng của chuyên gia
- Thừa nhận những điểm nào được coi là thích hợp
- Không cứng nhắc bám vào một viễn cảnh thuộc về sự thật, thay vào đó là chuẩn bị xem xét một loạt các đầu ra khả dĩ dựa trên những phát hiện của Hội đồng trọng tài về các vấn đề đang tranh chấp
- Thái độ trung lập khi lập báo cáo mà không truyền đạt bất cứ bình luận / nội dung pháp lý vụ việc / chiến lược của báo cáo

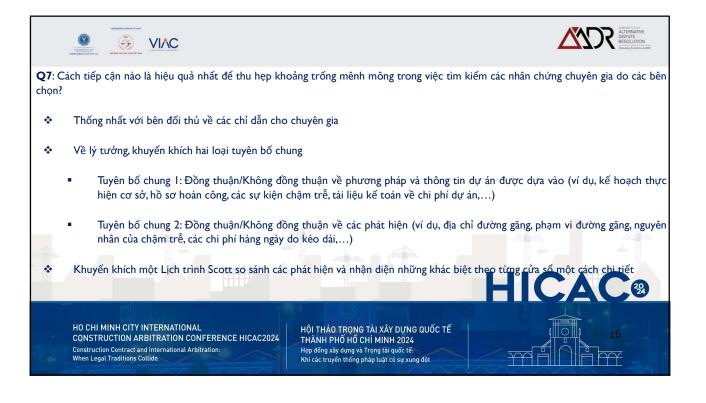
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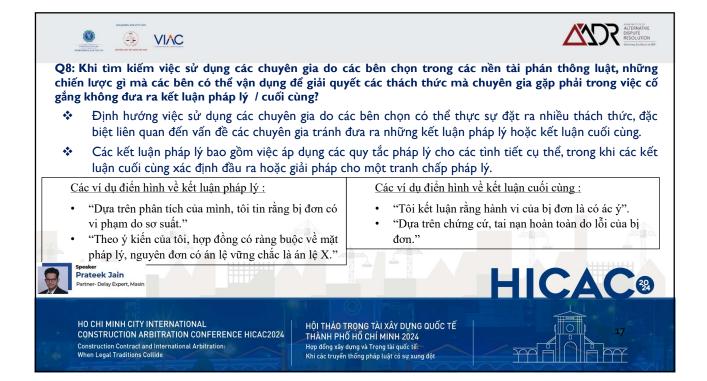


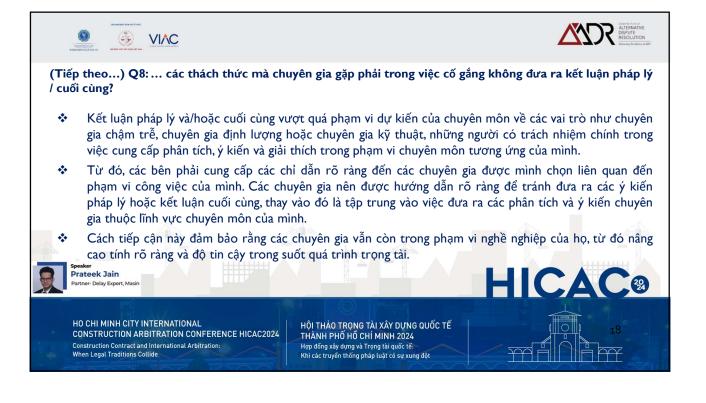




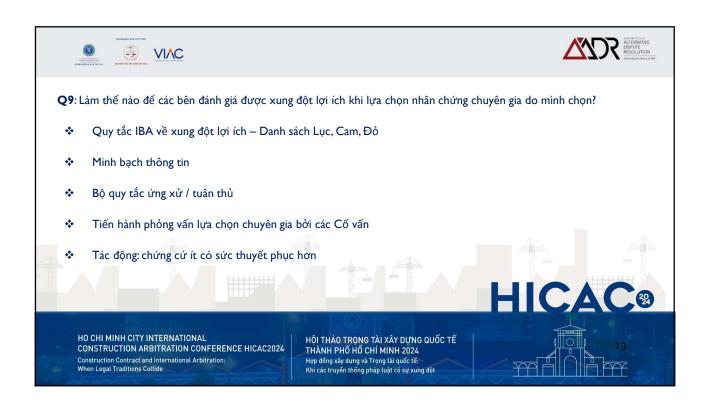








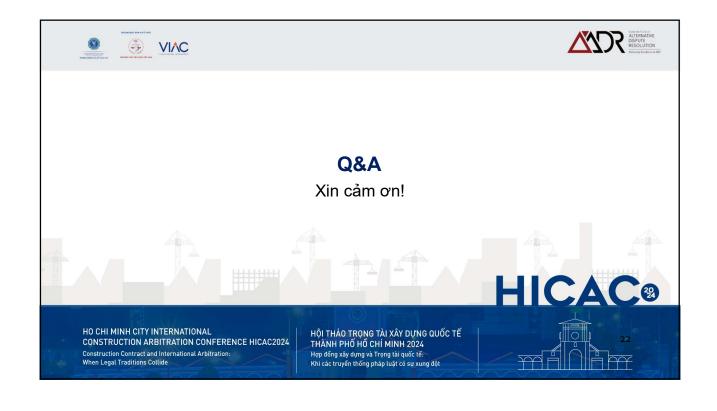






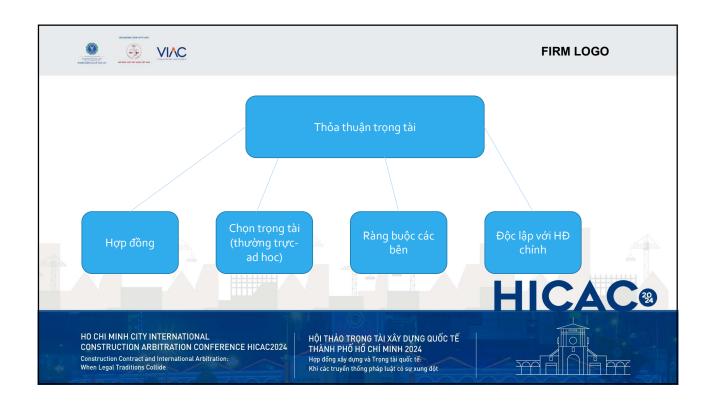




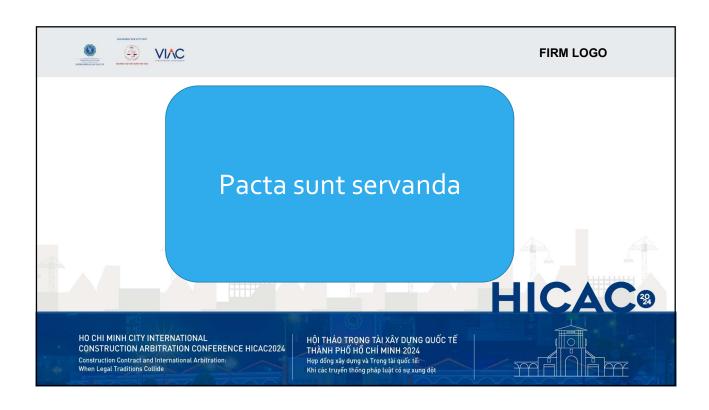












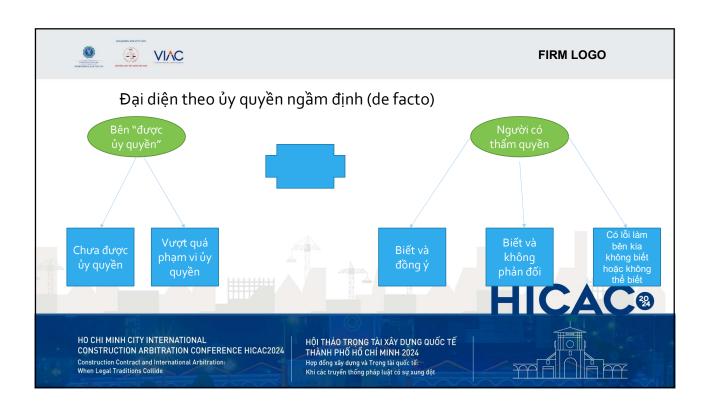


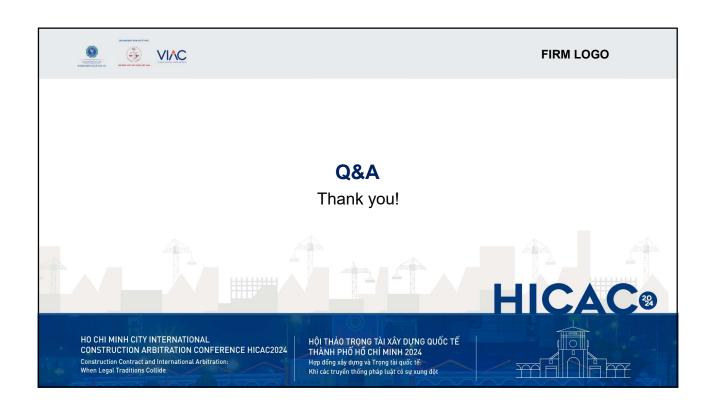




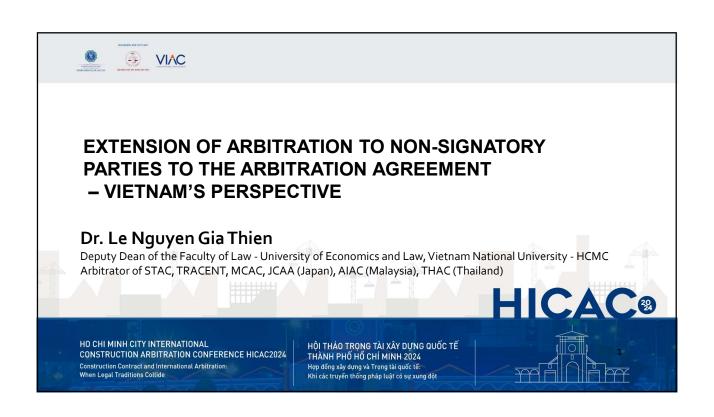


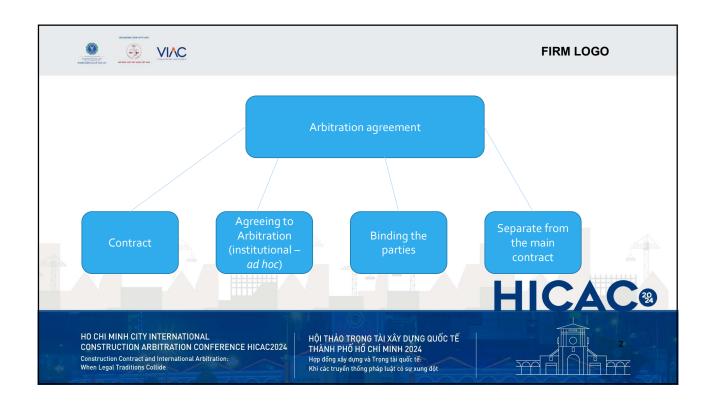




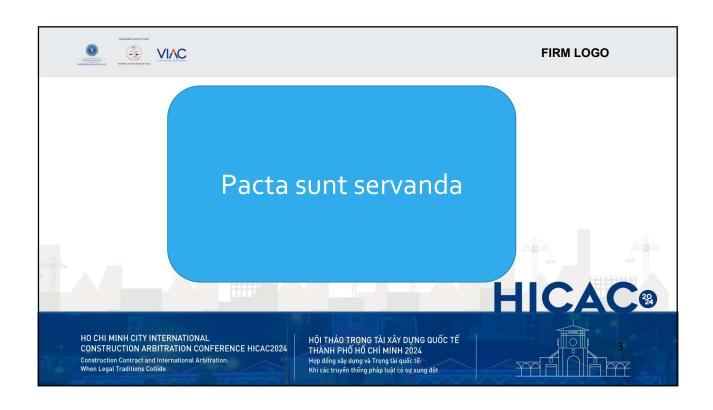


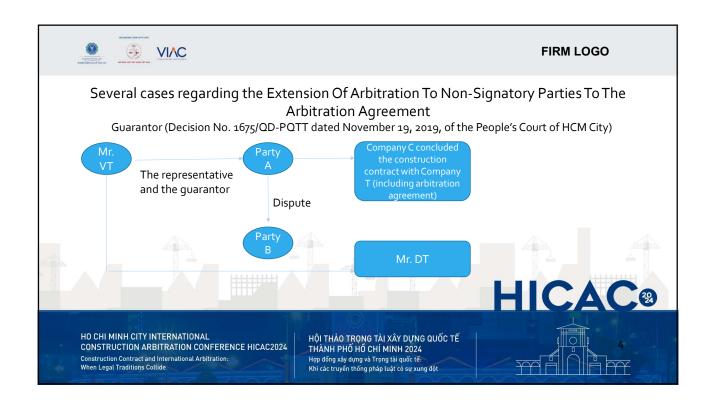




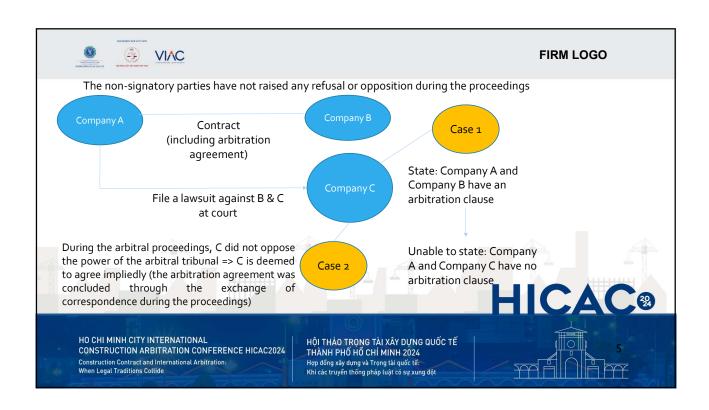






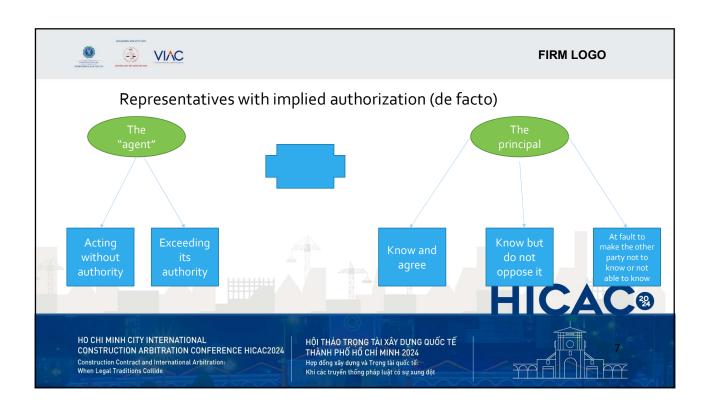


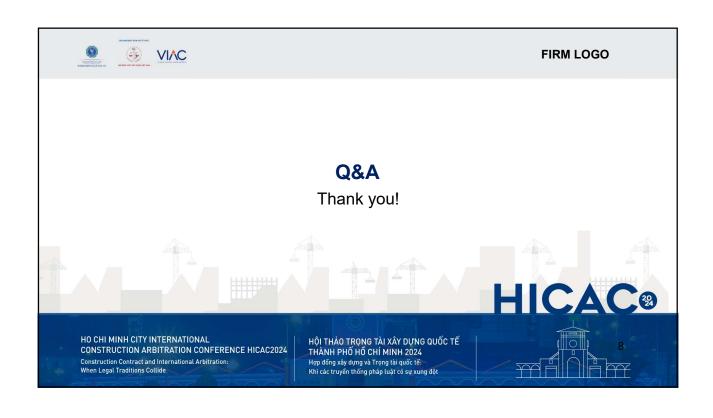




























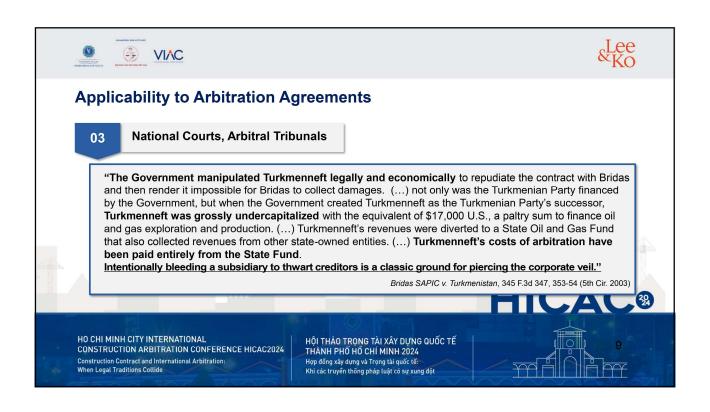








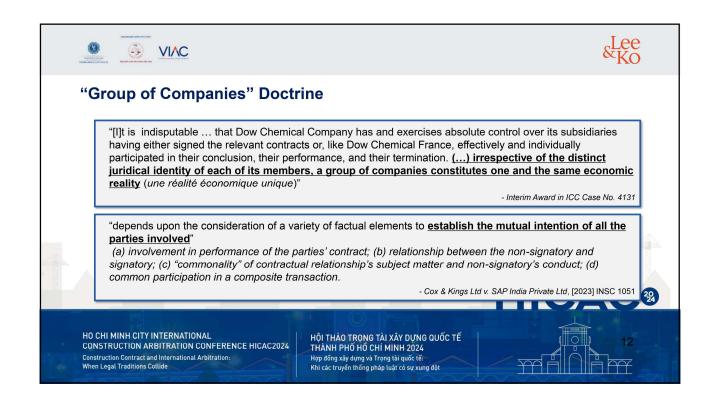




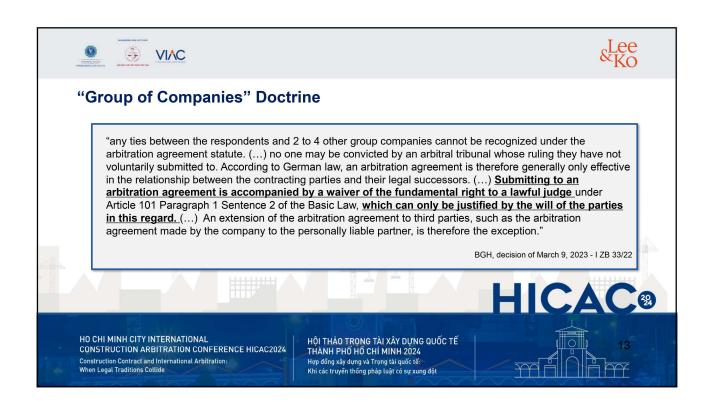


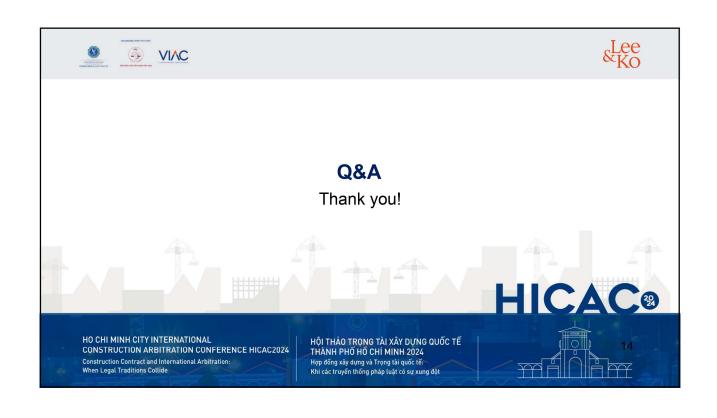












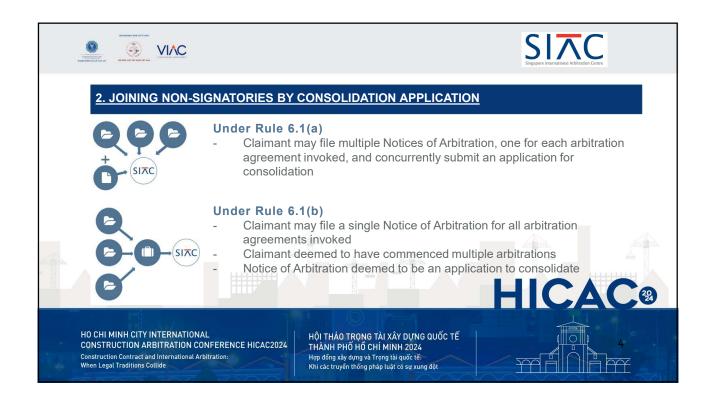












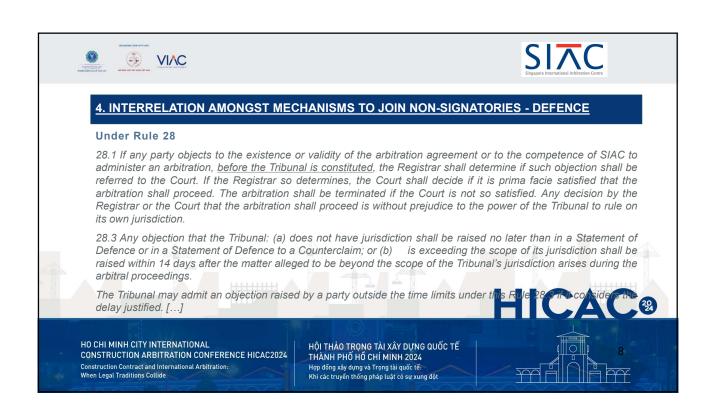




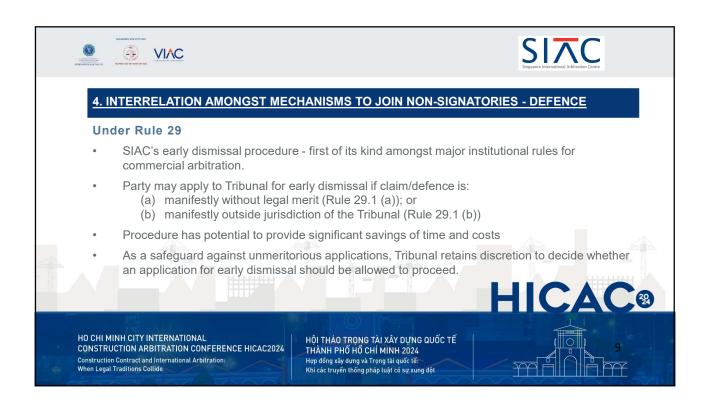


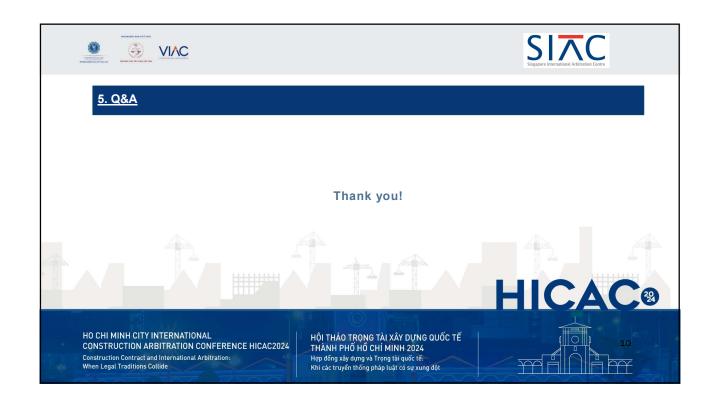




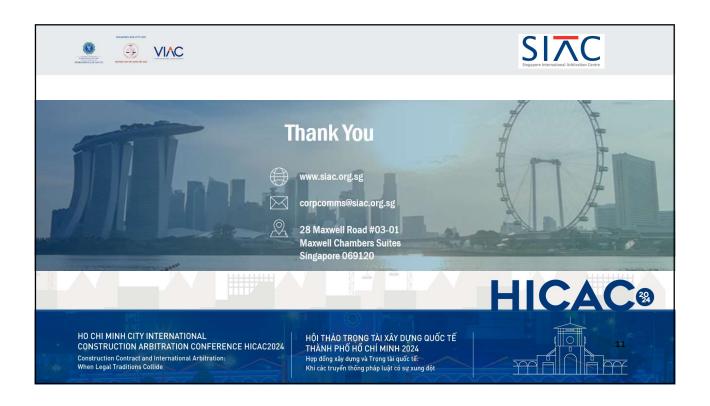




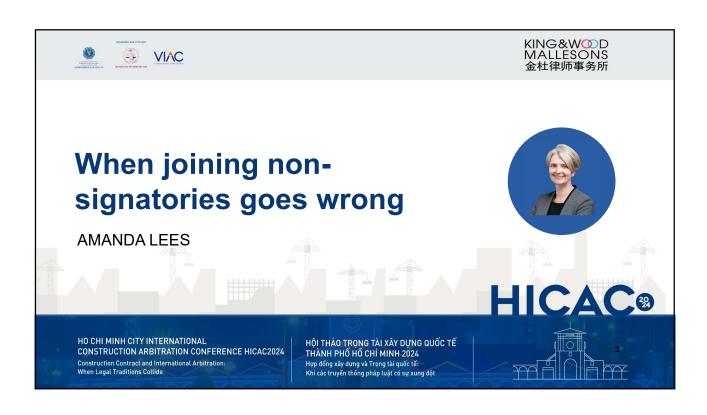














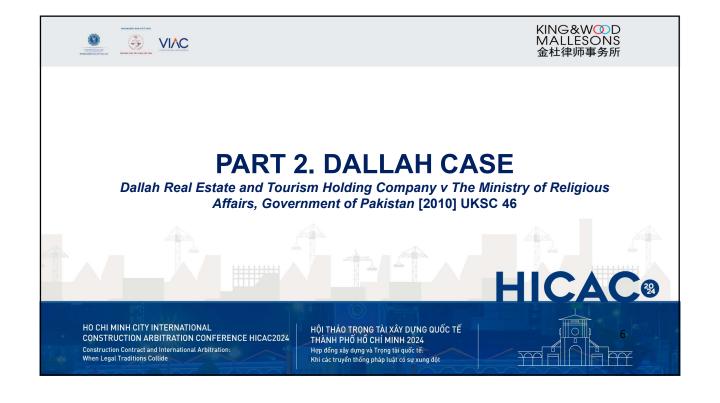




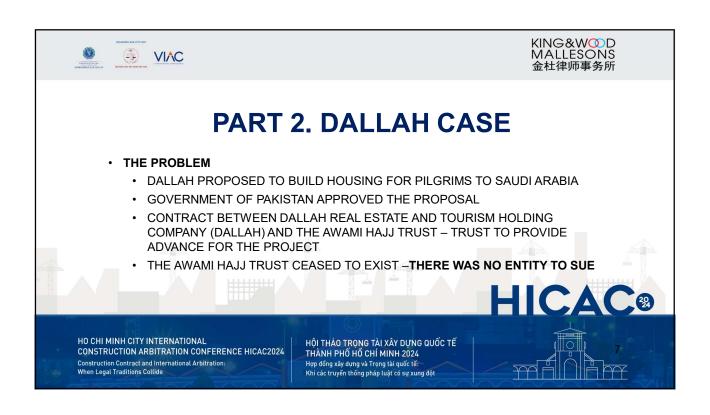


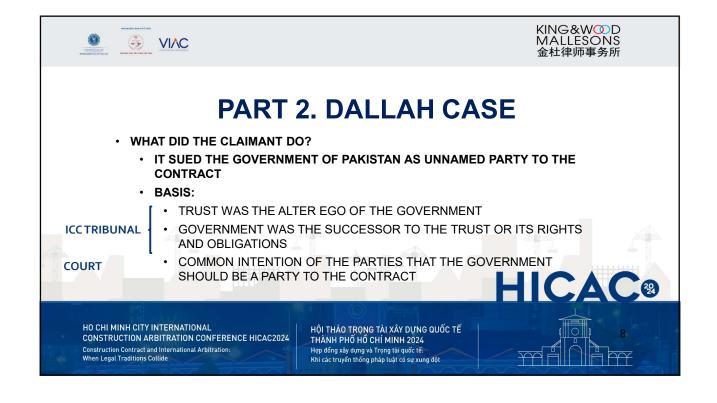




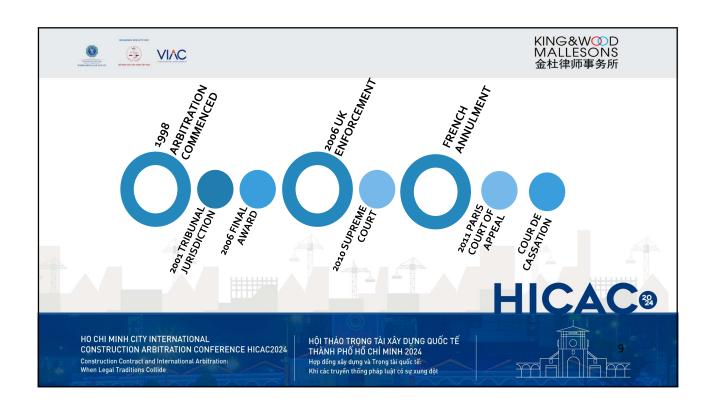


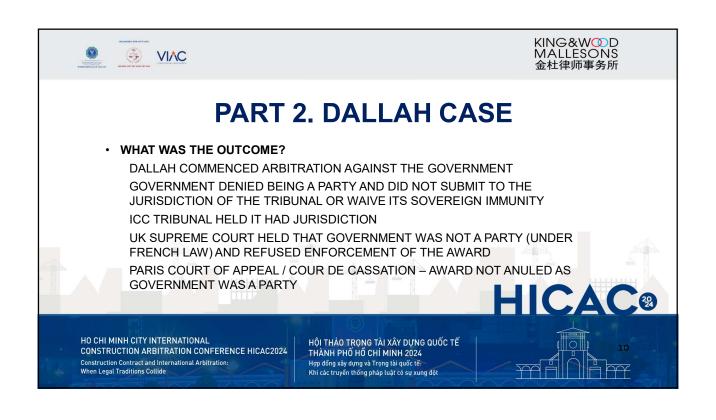




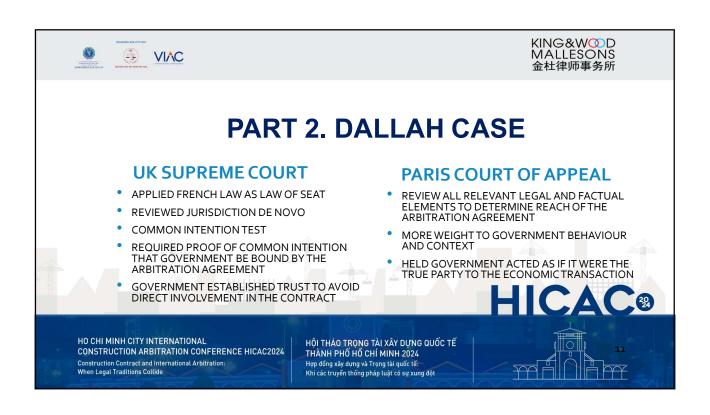


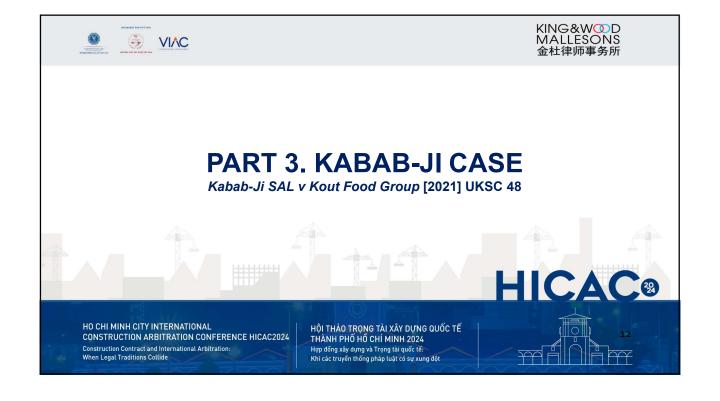




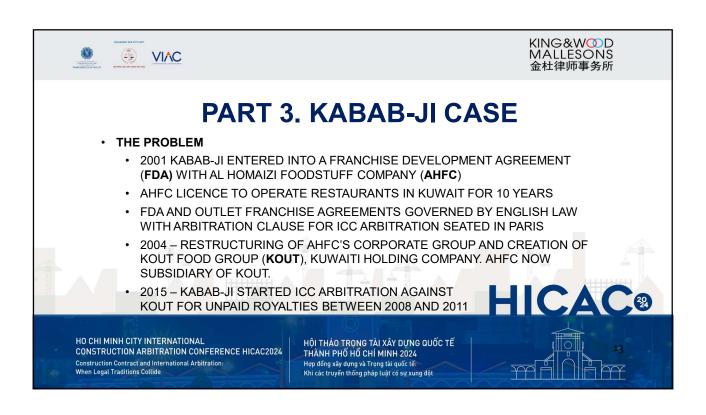


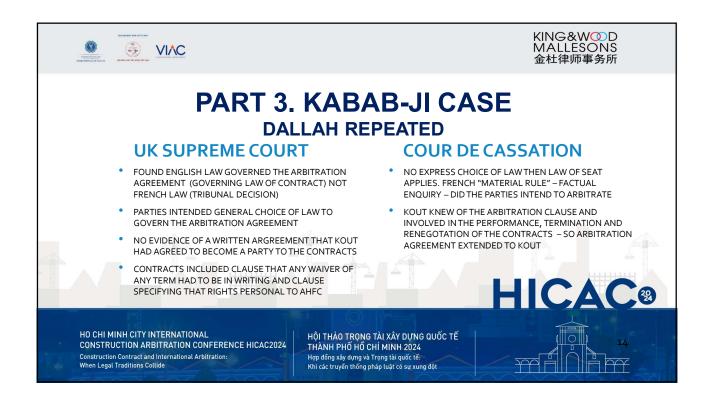






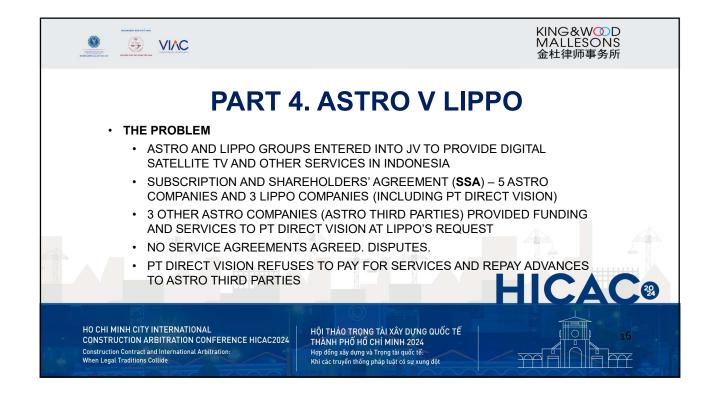




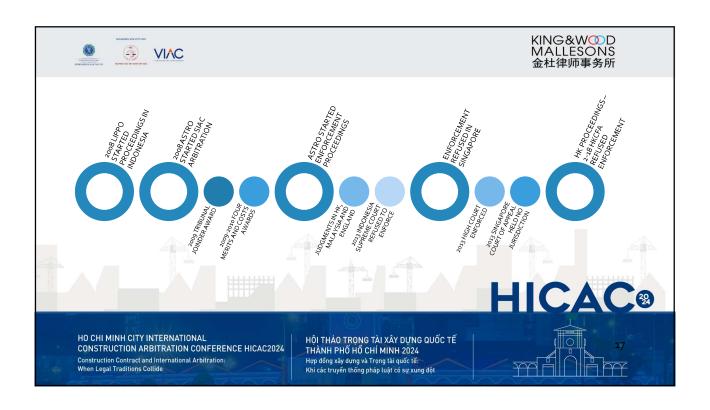


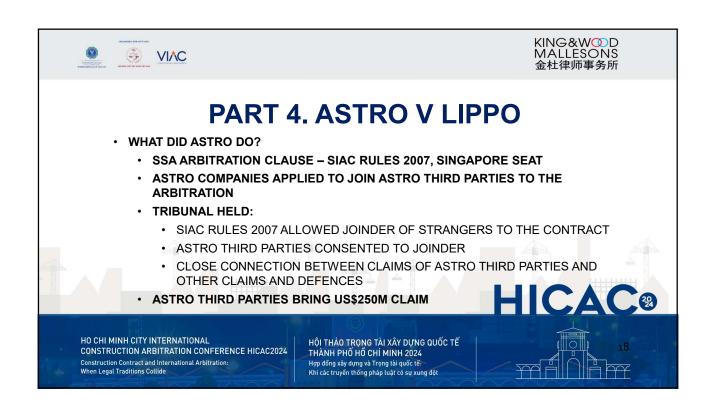




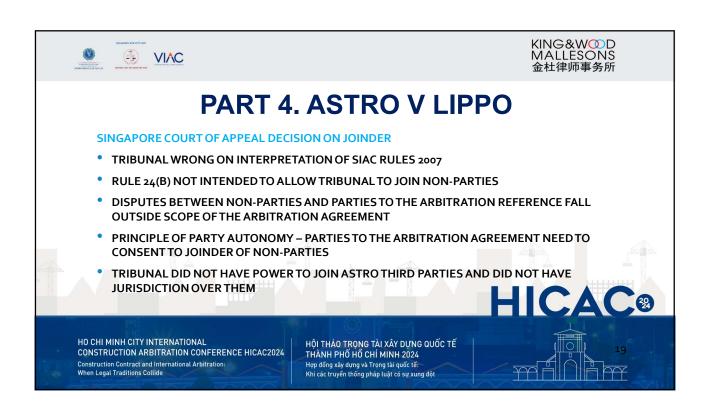


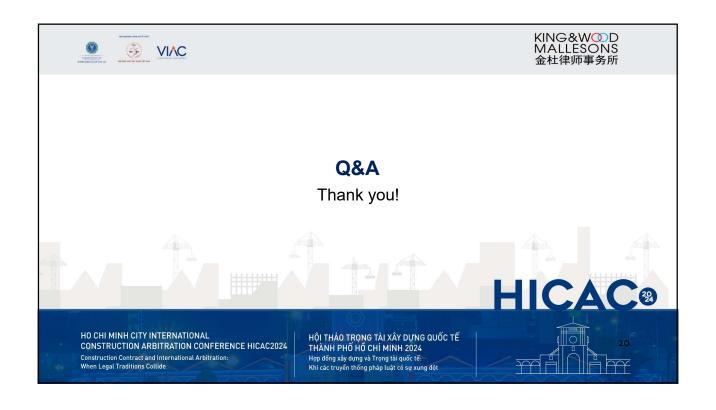


















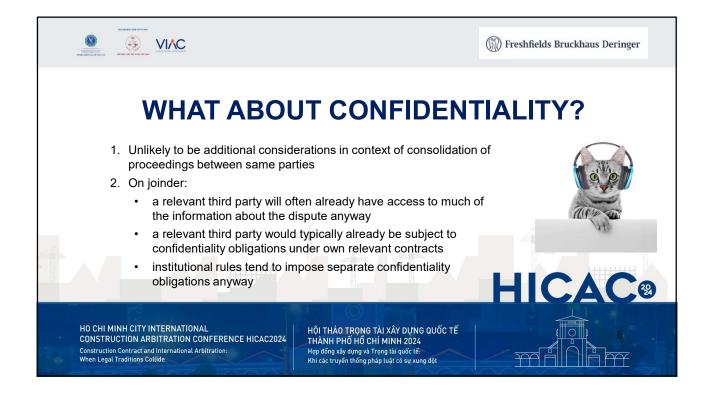




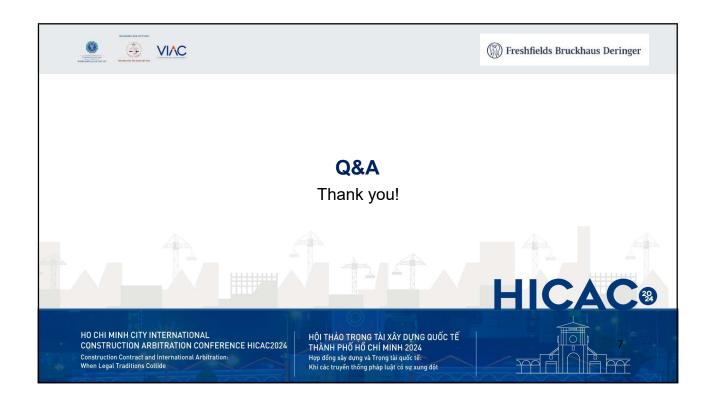






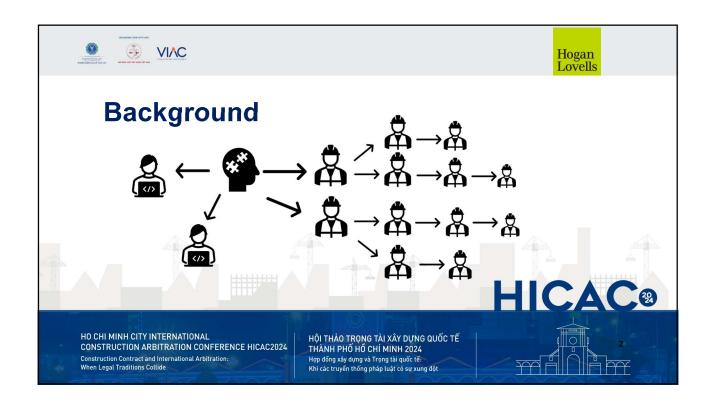






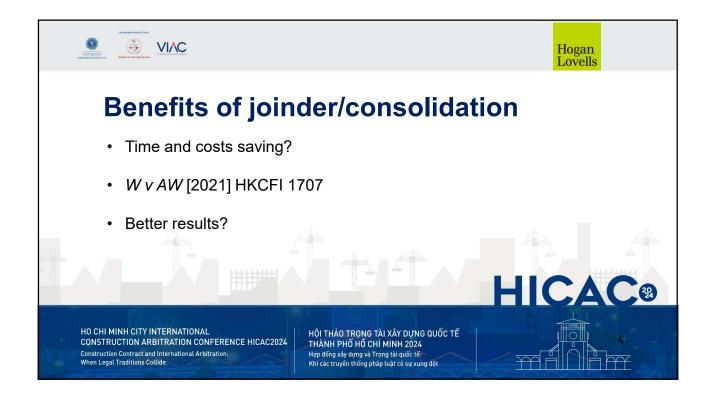










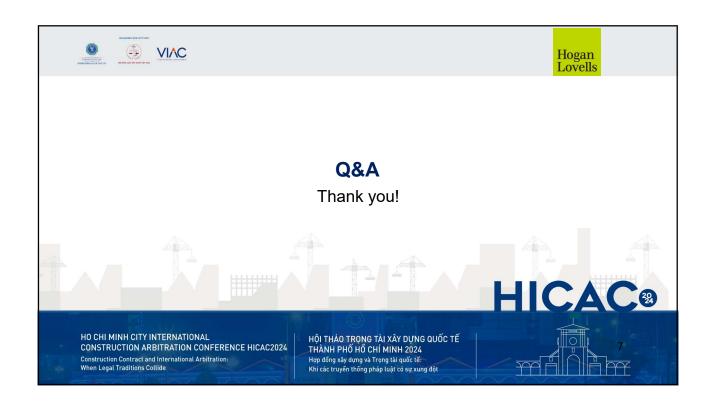










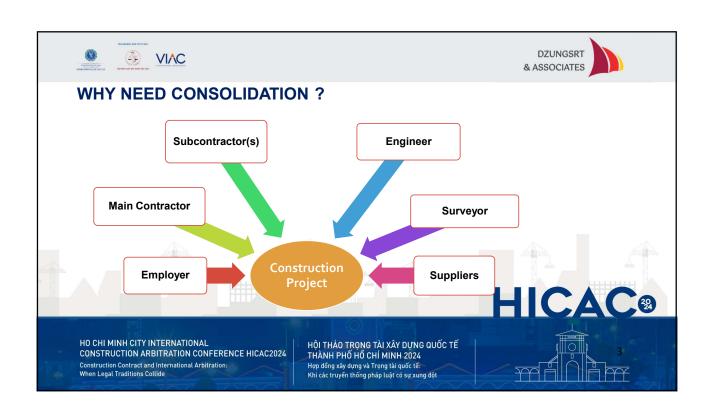


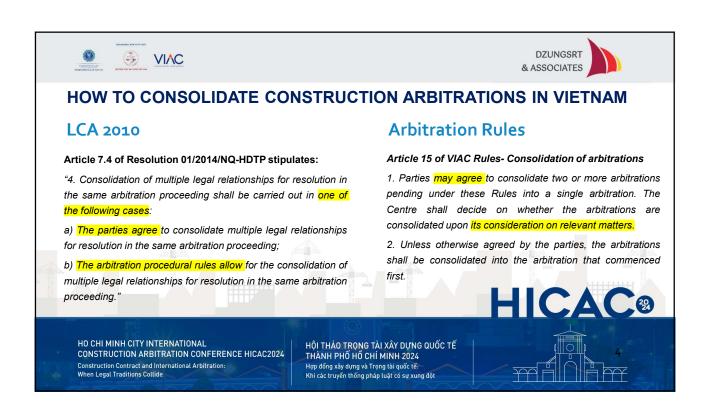




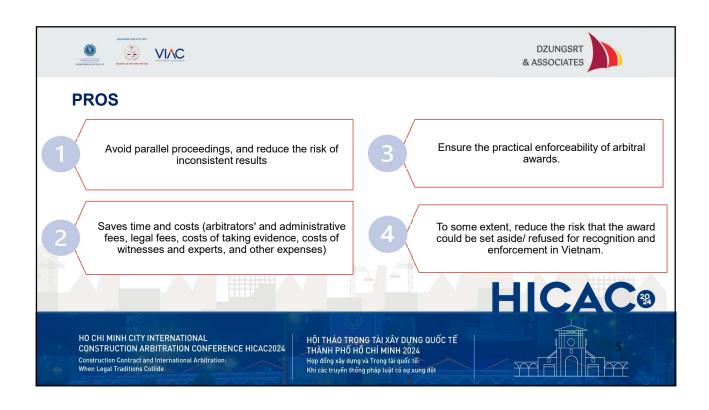




















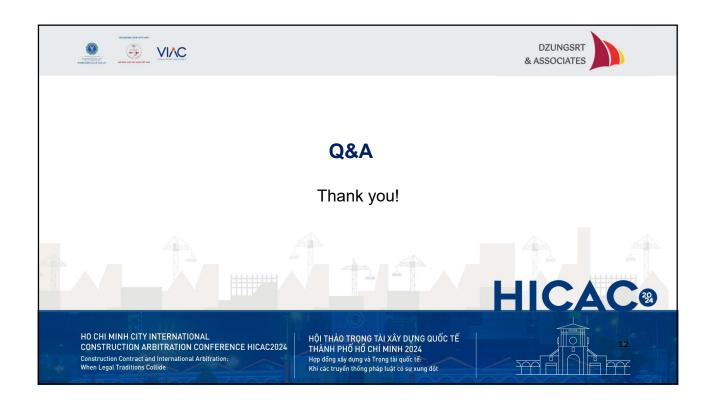
















26 04

SIDE EVENT

13:30-16:00

Fireside Chat-Key Factors for A successful Construction Arbitration:
Comptency Capacity- Integrity? Session Hosted By CIArb Vietnam Chapter

Venue: Caravelle II, Level 3 - Caravelle Saigon Hotel - 19-23 Lam Son Squar, District 1, HCMC

26 04

SIDE EVENT

14:00-17:00

Practies And Experiences In Resolving Construction Disputes By Abbitration In Vietnam International Abbitration Center (VIAC)

Venue: VIAC HCMC Branch - 171 Vo Thi Sau street, District 3, HCMC

26 04

SIDE EVENT

14:00-16:00

Workshop: Preventing Disputes During Contract Implementation - Issues Related Time And Costs Claims

Venue: LNT & PARTNERS - Level 21, Bitexco Financial Tower, No 2 Hai Trieu, District 1, HCMC

26 04

SIDE EVENT

16:00-18:00

The FIDIC Red Book: An International Clause-By-Clause Commentary
Session Hosted By YKVN With Supports From Wolter Kluwer And SCLVN

Venue: Opera 1 Meeting Room – Caravelle Hotel – 19-23 Lam Son Square, District 1, HCMC

27 04

NETWORKING TOUR

Cu Chi Tunnel And Mekong River Day Tour for Speakers, Sponsors, And Invited Guests

27-28 04

SIDE EVENT

08:00-17:00

SCLVN-DRBF Dispute Board Administration & Practice Training Workshop, Organized By SCLVN And DRBF To Provide Training To People On Dispute Boards (DB), With Certificate Provided By DRBF

Venue: Tulip Room - Rex Hotel - 141 Nguyen Hue Boulevard, District 1, HCMC



HO CHI MINH CITY INTERNATIONAL CONSTRUCTION ARBITRATION CONFERENCE HICAC2024

Construction Contract and International Arbitration: When Legal Traditions Collide

HỘI THẢO TRONG TÀI XÂY DỰNG QUỐC TẾ THÀNH PHỐ HỒ CHÍ MINH 2024

Hợp đồng xây dựng và Trọng tài quốc tế: Khi các truyền thống pháp luật có sự xung đột