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2020

COMMERCIAL MEDIATION AND ARBITRATION – THE ULTIMATE COMMERCIAL DISPUTE RESOLUTION

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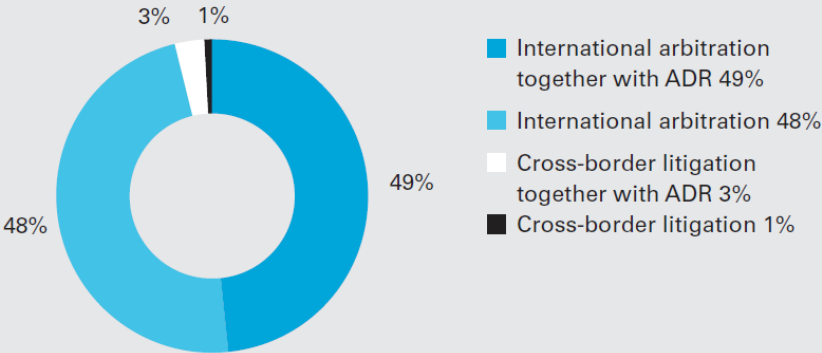
VIAC
TRUNG TÂM TRỌNG TÀI QUỐC TẾ VIỆT NAM

01

Commercial dispute resolution in Vietnam

International Commercial Dispute Resolution

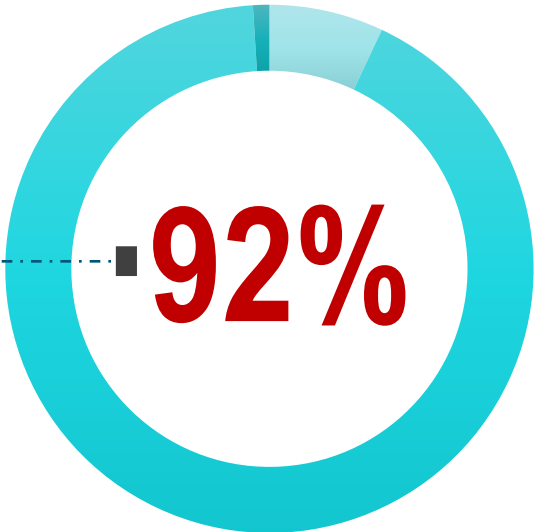
Chart 1: What is your preferred method of resolving cross-border disputes?



97%

Of respondents expressed that **international arbitration** is their preferred method of resolving cross-border disputes

Source: 2018 International Arbitration Survey by Queen Mary University of London
<http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2018-International-Arbitration-Survey-report.pdf>



■ Yes ■ No ■ In consideration

Foreign-invested enterprises do not favour litigation when disputes arise

Source: The Vietnam Provincial Competitiveness Index 2017, Vietnam Chamber of Commerce and Industry
<http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2018-International-Arbitration-Survey-report.pdf>

Criteria	Arbitration	Litigation
Flexibility	Parties are allowed to agree on procedural order, place of hearing; to select arbitrator, applicable law,...	Procedural steps are clearly provided in detail in Civil Procedure Code, can barely changed by parties. By now Vietnamese courts have not yet applied foreign laws in practice
Adjudicator's specialization	Parties can select arbitrators who are specialized in the disputing areas to resolve disputes	Judges are selected by the Chief Justice. Parties are not allowed to choose.
Language	Regarding disputes with foreign factors or FDI enterprises, parties can choose the language of arbitration (English, Japanese, Chinese, etc.)	Language of litigation in Vietnam is Vietnamese
Confidentiality	Arbitration is confidential	Litigation is public
Lawyer's fee	Recoverable	Non-recoverable, unless parties have agreed upon
Enforcement in Vietnam	VIAC's awards can be directly enforced by the Civil Judgment Enforcement Agency pursuant to Law on Enforcement of Civil Judgments Foreign arbitration awards are enforced after recognition by the Vietnamese courts according to the CPC and New York Convention 1958	Legally effective judgments are enforced by the Civil Judgment Enforcement Agency pursuant to Law on Enforcement of Civil Judgments
International enforceability	VIAC's arbitration awards can be enforced in 160 nations and territories that are parties to New York Convention 1958	Restricted enforceability since Vietnam is not yet a party to Hague Convention 2005/2019

02

OBSERVATIONS ON THE USE OF ADRs IN TRANSACTIONS OF ENTERPRISES WITH JAPANESE INVESTMENT IN VIETNAM

ARBITRATION CLAUSES FOUND IN VARIOUS APPLICABLE MODEL CONTRACTS

Điều 19. LUẬT ĐIỀU CHỈNH VÀ GIẢI QUYẾT TRANH CHẤP

19.1 Hợp Đồng sẽ chịu sự điều chỉnh và được hiểu theo pháp luật Việt Nam.

19.2 Mỗi Bên tham gia Hợp Đồng đồng ý không hủy ngang rằng bất kỳ tranh chấp, bất đồng hoặc khiếu nại nào phát sinh từ hoặc liên quan đến Hợp Đồng bao gồm cả mọi vấn đề về sự tồn tại, tính hiệu lực hoặc việc hủy bỏ hoặc chấm dứt đều có thể được đưa ra trọng tài để giải quyết cuối cùng và có giá trị ràng buộc tại Trung Tâm Trọng Tài Quốc Tế Việt Nam ("VIAC") bên cạnh Phòng Thương Mại và Công Nghiệp Việt Nam theo các quy tắc của VIAC có hiệu lực vào thời điểm đệ trình. Các quy tắc này được xem như đã được đưa vào Hợp Đồng bằng cách viện dẫn đến Điều này. Địa điểm xét xử trọng tài sẽ là Hà Nội, Việt Nam. Số trọng tài viên sẽ là ba người được chỉ định theo các quy tắc của VIAC. Quyết định trọng tài sẽ là cuối cùng và có hiệu lực ràng buộc đối với Các Bên. Bên thua kiện trong thủ tục xét xử trọng tài đó sẽ phải chi trả các chi phí tiến hành thủ tục xét xử trọng tài của Bên kia. Bất kỳ bên nào được xử thắng theo quyết định trọng tài đều có thể yêu cầu bất kỳ tòa án có thẩm quyền nào hoặc bất kỳ cơ quan pháp lý nào có thẩm quyền cưỡng chế thực hiện quyết định trọng tài. Mỗi Bên đồng ý chịu sự ràng buộc của quyết định trọng tài và sẽ hành động theo đúng với quyết định trọng tài.

ARTICLE 13. SETTLEMENT OF DISPUTES

Any dispute arising out of or in relation with this Agreement shall be resolved by arbitration at the Vietnam International Arbitration Centre at the Vietnam Chamber of Commerce and Industry (VIAC) in accordance with its Rules of Arbitration.

Dispute resolution clause in a Contract signed with agents in the supply network of a Japanese FDI enterprise in Vietnam

- ❖ Agency agreement
- ❖ Contract with domestic vendors providing source materials
- ❖ Contract with foreign partners
- ❖ Contract with logistics partners

Arbitration clause in a model contract used for transactions with domestic vendors by a Japanese FDI enterprise in Vietnam- 2012

ARBITRATION CLAUSE IN MODEL CONTRACTS IN USE

2.3.6	Place of Arbitration GCC 20.6: Arbitration	Both parties agreed with the following with reference to GCC 20.6 : (a) All disputes arising out of or in connection with the Contract shall be finally settled at Vietnamese International Arbitration Center (VIAC) by one or more arbitrators appointed in accordance with the Rules of VIAC. (b) The language of the arbitration shall be English. (c) The place of arbitration is in Vietnam.	
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Dispute resolution clause is usually placed under Specific Conditions of EPC Contract in which EPC Joint Operators include.

- ❖ EPC contract
- ❖ Subcontractor agreement

03

Commercial Mediation and Arbitration in Vietnam

Commercial Mediation

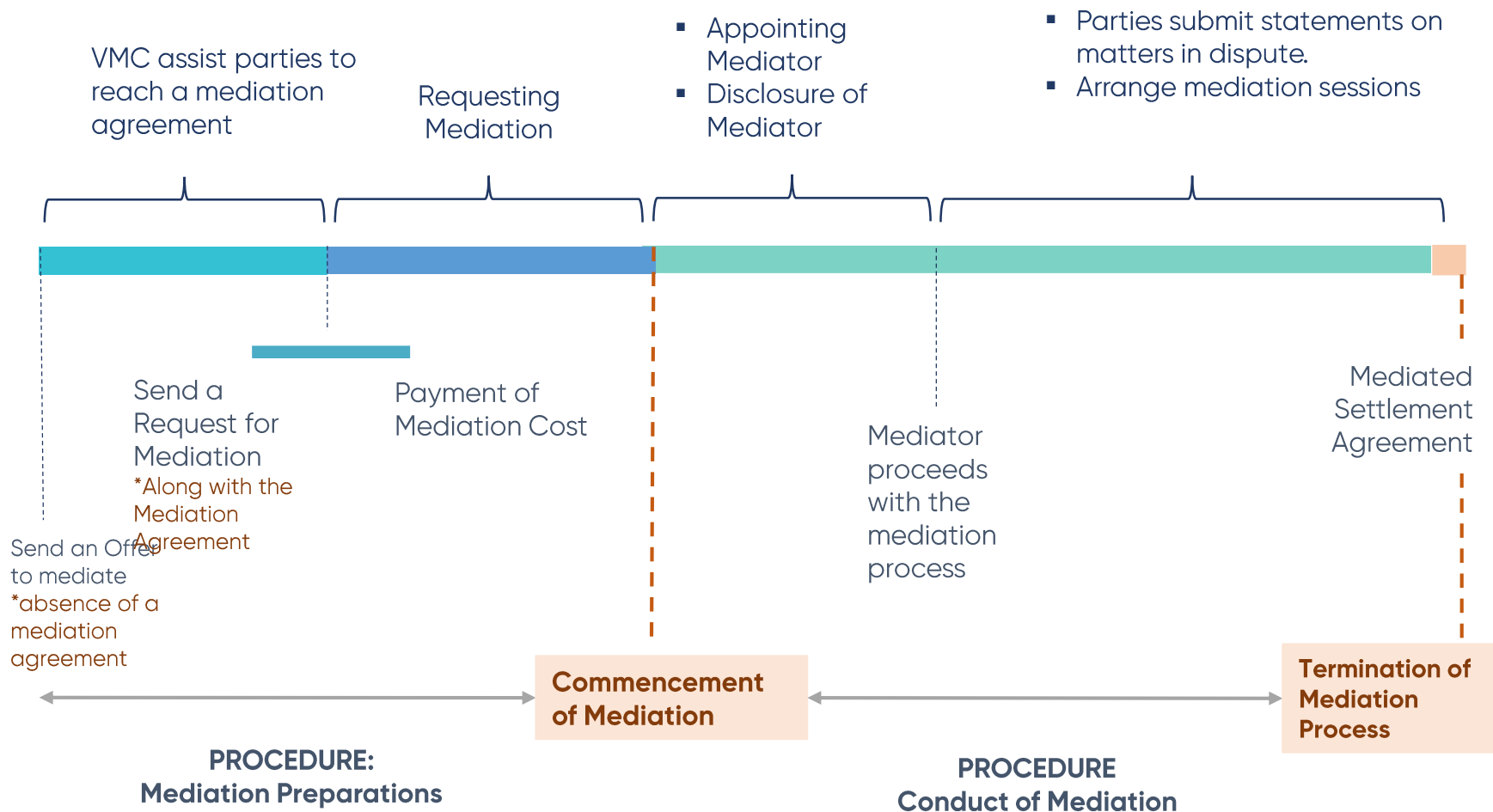
- It is non-litigation process
- Mediation aims to provide a win-win outcome
- Mediation is a voluntary process that upholds party autonomy

Mediation	Arbitration	Litigation
The parties have full control over the process, the selection of mediators, place and language of mediation, whether to proceed or walk away from mediation.	Party autonomy is respected but also limited by specific procedures and principles (place of arbitration, arbitrator, agreement on arbitration proceeding, etc). The outcome of the dispute is decided by the arbitral tribunal.	Party autonomy is substantially limited. Place of litigation, court-appointed judge, language in litigation, etc are strictly prescribed in Civil Procedure Code. Outcome of the case is decided by the Trial Panel.
If the parties conclude a mediated settlement agreement i.e. they reach a settlement at mediation, the outcome is win-win. Parties can maintain their business cooperation.	The outcome of arbitration is always win-lose. In the worst-case scenario, neither parties are the winners.	Similar to arbitration, the outcome of litigation is win-lose or lose-lose.

- Commercial Mediation in Vietnam as promulgated in Decree 22/2017/ND-CP allows successful out-of-Court mediation results to be recognized and enforced similarly to court judgment or arbitral award under the provisions of Chapter 33 of the Civil Code 2015

Commercial Mediation

A typical mediation process
at Vietnam Mediation Center (VMC) of VIAC

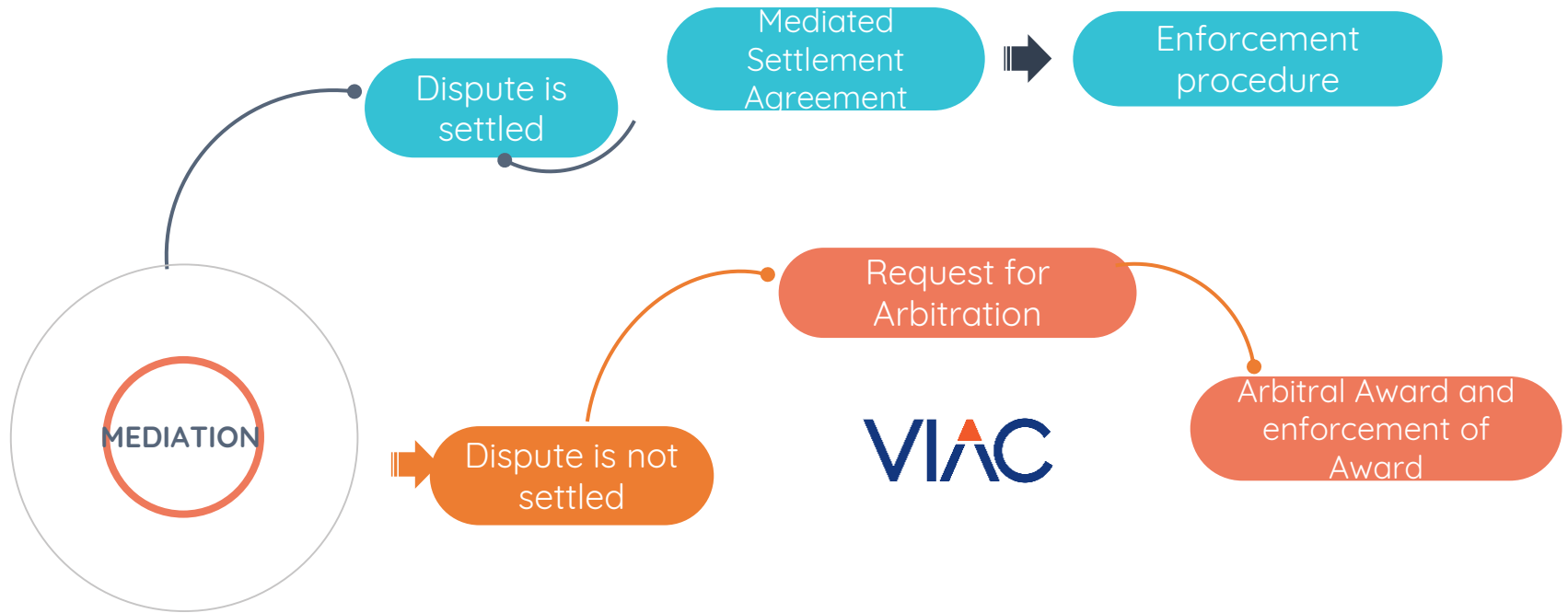


HYBRID ADR PROCESS TREND

MEDIATION COMBINED WITH ARBITRATION

EXAMPLE 1

Mediation-Arbitration(Med-Arb)



HYBRID ADR PROCESS TREND

EXAMPLE 2: Arbitration-Mediation-Arbitration(Arb – Med – Arb)

Dispute Resolution through Arbitration

AGREEMENT TO MEDIATE AND ARBITRATE

This Agreement to Mediate and Arbitrate in relation to Contract No. [redacted] dated October 26th, 2012 ("Contract"), is made on December 16th, 2013 at the Head office of the Vietnam International Arbitration Centre ("VIAC") in front of the VIAC Arbitral Tribunal resolving Case No. [redacted] ("the Tribunal") at the preliminary hearing on jurisdiction, by and between:

Party A:

Investment Certificate No. [redacted] issued by the People's Committee of Hanoi on January 12th, 2007, 7th amendment on March 26th, 2012.

Address: [redacted]

Authorized representative: Mr. [redacted] and [redacted]

Party B:

Registration Certificate No. [redacted] Planning and Investment on July 9th, 2013, 7th amendment on August 22nd, 2013.

Address: [redacted] Hanoi, Vietnam

Authorized Representative: Mr. [redacted] also hereto called as "Parties".

Whereas:

Supplement Arbitration Agreement with Mediation Agreement




Parties agree on arbitration proceedings to facilitate Mediation according to VMC Mediation Rules



- Combination of Arbitration and Mediation allows disputes at risk of violating time limit to have more time for mediation;
- It also facilitates the enforcement of mediated settlement agreement under the 1958 New York Convention.


Dispute is settled

MEDIATED SETTLEMENT AGREEMENT
Implement recognition of successful out-of-Court mediation results process


Dispute is not settled

ARBITRAL TRIBUNAL RECOGNIZE MEDIATED SETTLEMENT AGREEMENT
The agreement is enforced within a similar framework to arbitral award in Vietnam or under NYC 1958

Proceed to Arbitration

Commercial Mediation

Dispute Resolution Statistics at Vietnam Mediation Center (VMC) of
VIAC

07

Total number of
cases

934.5 billion VND
~ 40.3 million USD

Total value in dispute



Construction, IP, Ship sale

Types of dispute

04/07
cases

Parties appoint
mediator

01/07
case

Involvement of
lawyer

04/07
cases

Dispute is settled and
parties voluntarily enforce
the settlement agreement

02/07
cases

Mediator is recognized by
Centre for Effective Dispute
Resolution(CEDR)

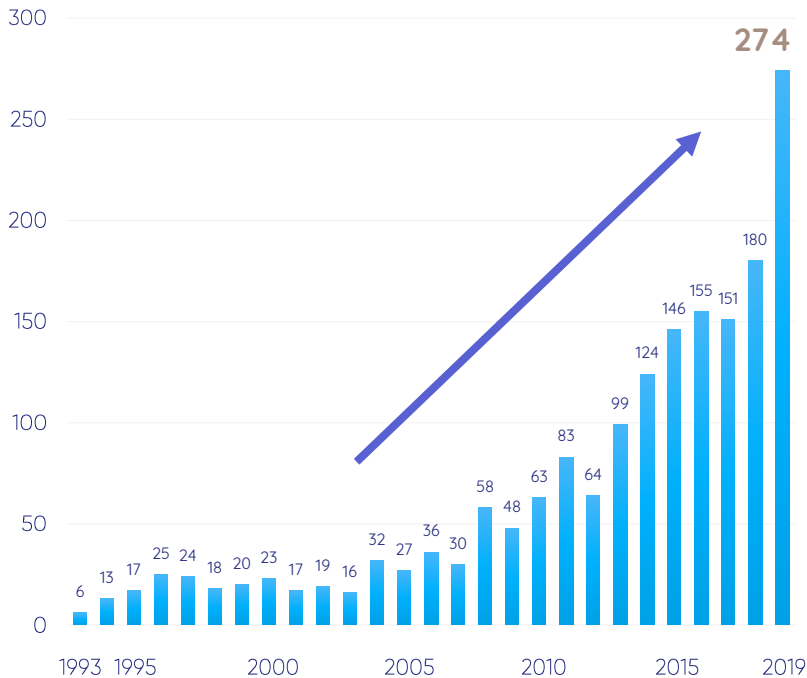
03/07
CASES

The language of mediation is
English

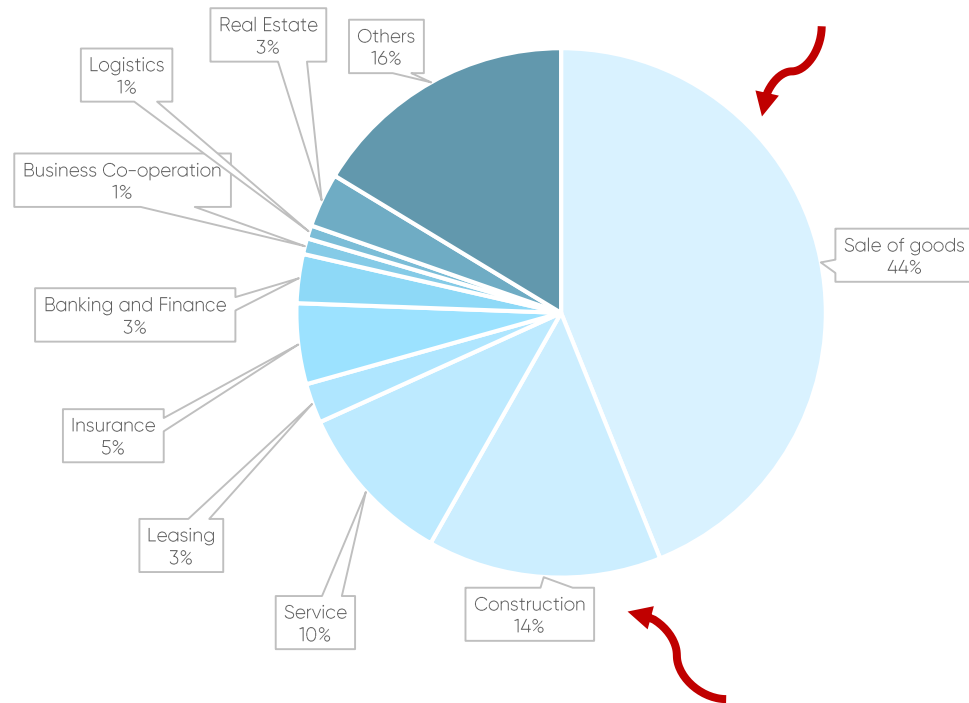
Commercial Mediation

Dispute Resolution Statistics at Vietnam International Arbitration Center (VIAC)

**REGISTERED CASES AT VIAC
1993 - 2019**



**TYPES OF DISPUTE
1993 - 2019**



Commercial Mediation

Dispute Resolution Statistics at Vietnam International Arbitration Center (VIAC)

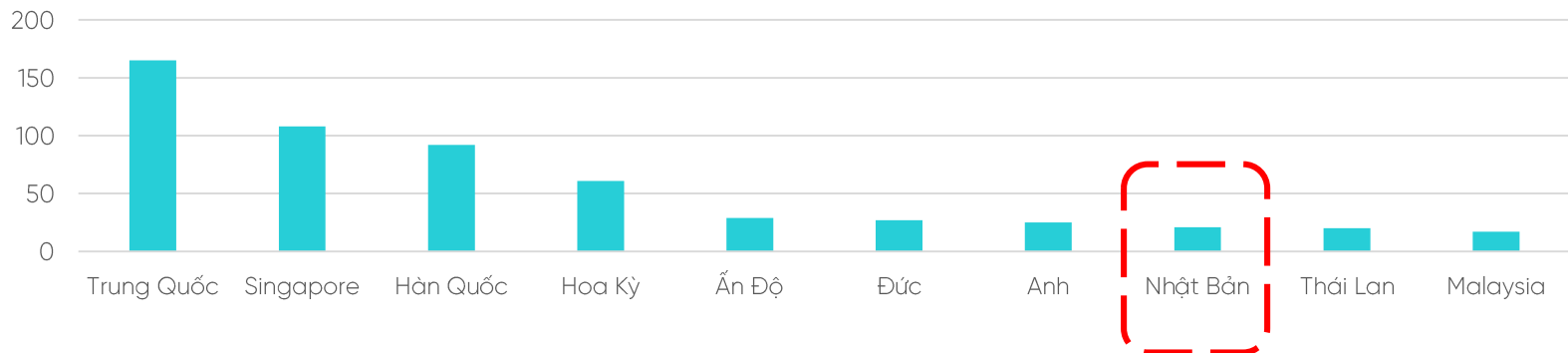
45% Disputes with foreign elements

63 Countries and regions where businesses / parties to the dispute have participated in resolving disputes at VIAC.

The ONLY arbitral institution in Vietnam where parties have a variety of nationalities.



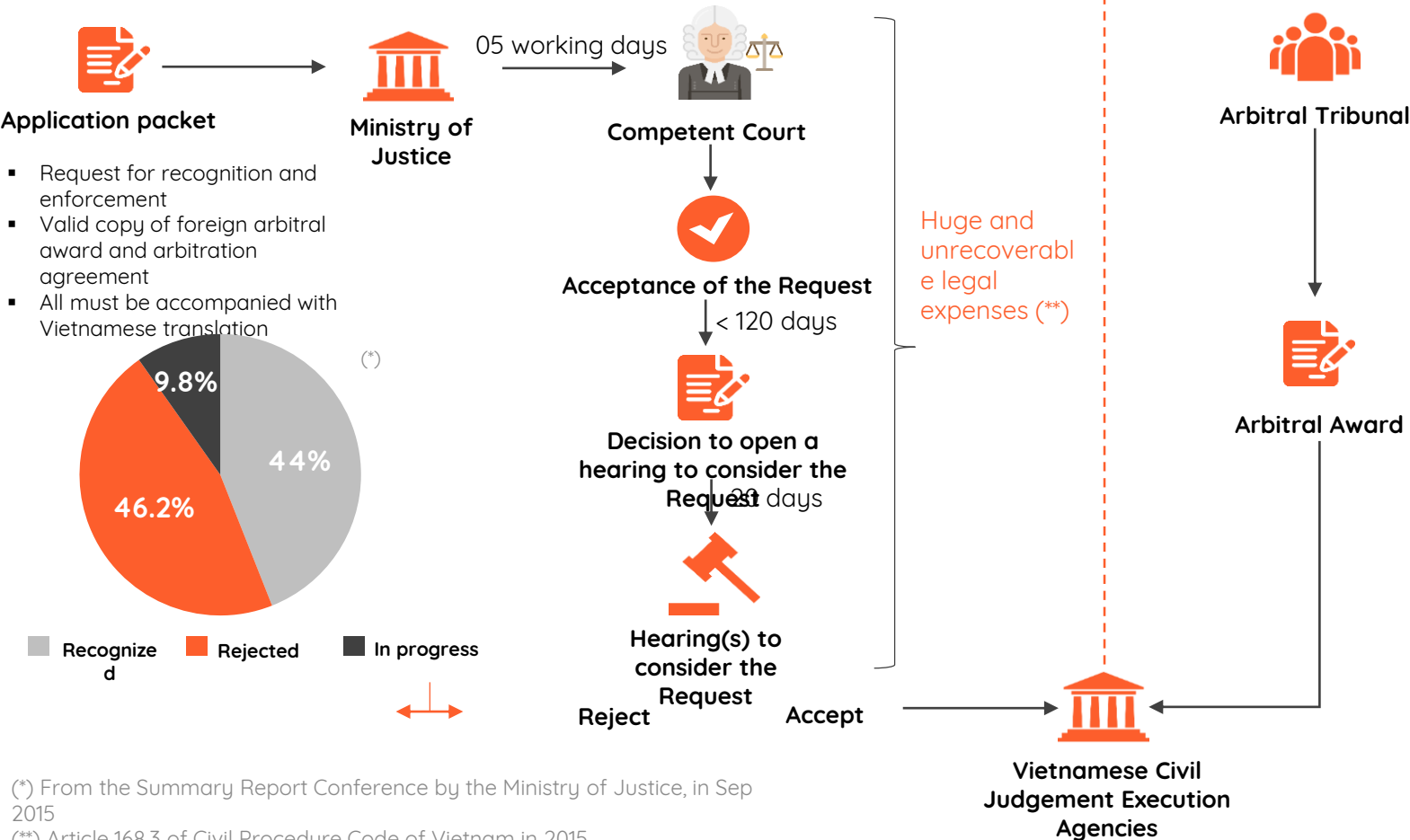
TOP 10 NATIONALITIES OF PARTIES TO THE DISPUTES AT VIAC



Commercial Arbitration

Notes for resolving disputes through Arbitration

RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN VIETNAM

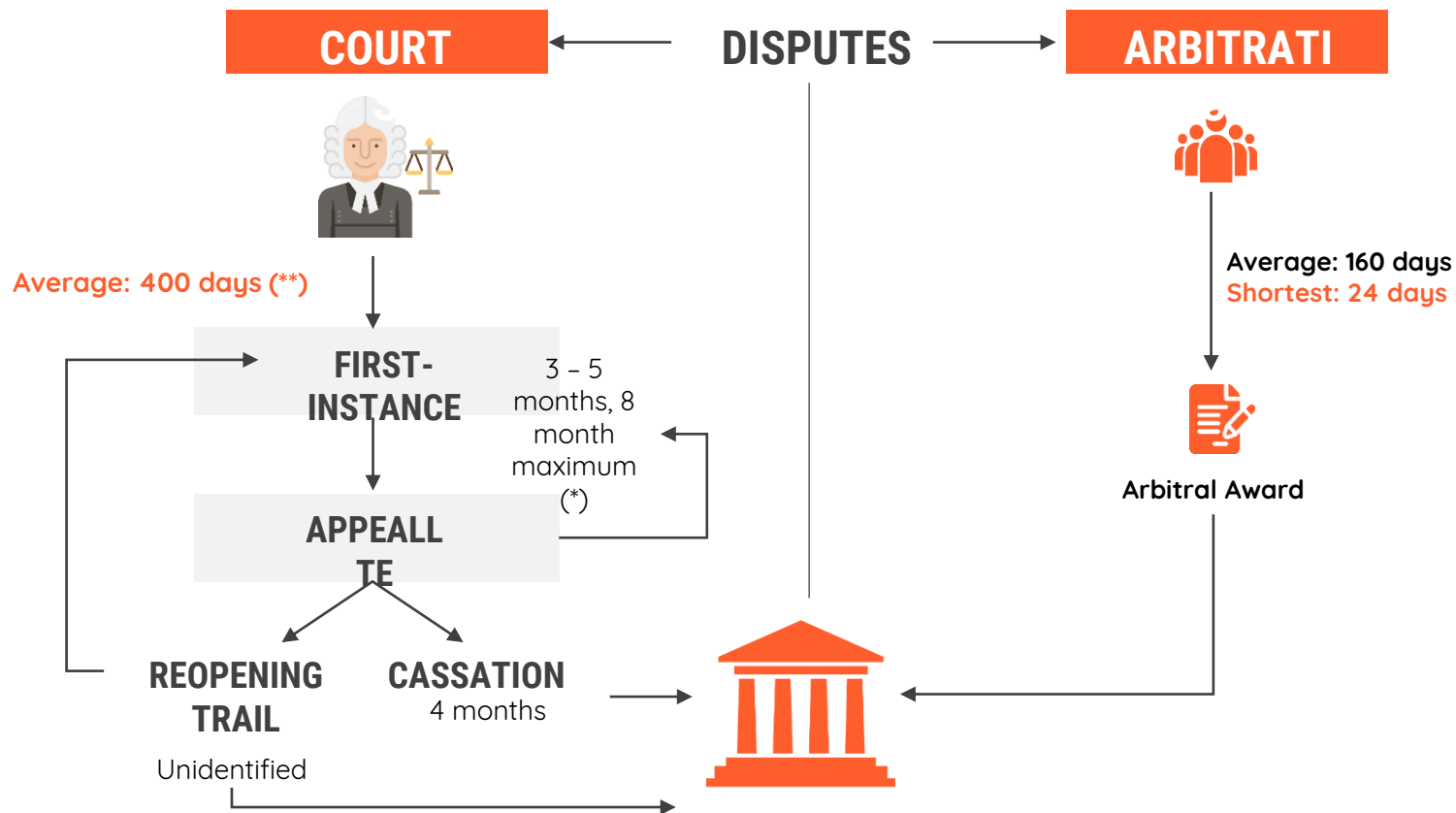


(*) From the Summary Report Conference by the Ministry of Justice, in Sep 2015

(**) Article 168.3 of Civil Procedure Code of Vietnam in 2015

Commercial Arbitration

Notes for resolving disputes through Arbitration



(*) The time-limits are specified in the Civil Procedure Code of Vietnam in 2015, which may be extended if hearings are adjourned

(**) As shown in Appendix 01 of the Government Resolution 19-2017/NQ-CP on continuing to implement the major tasks and solutions of improving business environment and enhancing national competitiveness in 2017, targeting to 2020.

(***) From the Annual Report of Vietnam International Arbitration Centre (VIAC)



Thank you for your attention

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