



Arbitration

Arbitration attracts Foreign Direct Investment

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Foreign direct investors

Global market
and worldwide
distribution
networks

Jobs creation

Wealth
redistribution

Advancement
in technology

.....

Unique opportunity for
economic development

BENEFITS



Transparent and fair
legal system?

Adequate dispute
settlement mechanism?

Alternative Dispute
Resolution available?

Protection of
their investment
Investment Climate



Local Language

Less flexibility

Local laws

Lacking expertise

Lack the jurisdiction

etc

advantageous

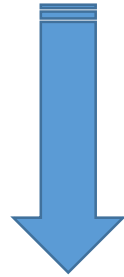


Arbitration



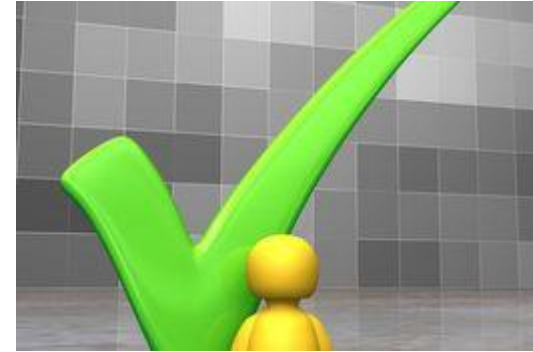
- Allow parties to create system tailored to their dispute
- Guarantee the necessary confidentiality
- Allow parties to select experienced and professional arbitrators
- Neutral forum for the settlement of disputes

An incentive for greater accessibility to the legal system



Attracting the business community

Arbitration is a growth industry, benefits the reputation of an economy in the international area and important to the investment climate of an economy.



Length of arbitration proceedings

- A study of WB Group in 2013 shows:
 - Average of 326 days to conduct arbitration proceedings
 - Some countries can also take longer: Brazil (560days), India (569 days), Croatia (679 days), Iraq (910 days)

VIAC- the long standing Arbitration Center in Vietnam



Time

Ordinary procedure : ≤ 200 days

Fast Track Procedure: estimated) ≤ 100 days

VIAC



• Arbitration initiating

• Tribunal establishment

• Documents study

• Hearing

• Award

Ordinary procedure

≤ 25 days

≥ 45 days

~ 30 days

~ 20 days

≤ 30 days

Fast Track

≤ 2 days

≥ 30 days

~ 20 days

~ 15 days

≤ 15 days

Specialized judicial assistance

LOSER

Arbitral award

Winner

Voluntarily perform

refuse

Judicial
enforcement



FEE

❖ Arbitration fee:

7% ~ 7.5% claiming value

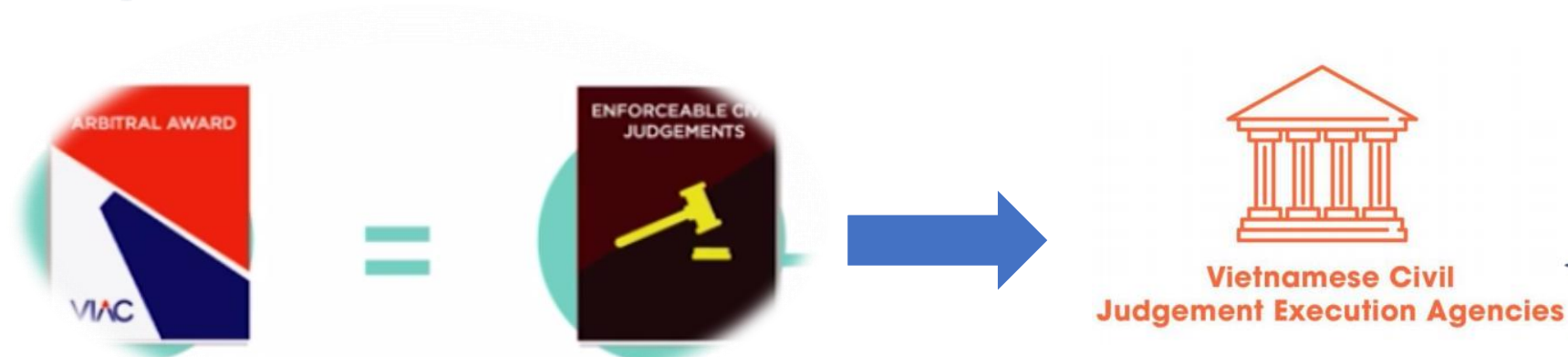
❖ Lawyer fee:

can be compensated



Enforcement in Vietnam

At enforcement body – same as court decisions



Investor-State Dispute Settlement (ISDS)

- Investment dispute – any dispute that arises from an investment made by a foreign investor
 - Any disagreement on a point of law or fact, a conflict of legal views or interests between parties (*East Timor*, ICJ, 1995)
- *Parties to investment disputes*
 - *States*
 - *Foreign investors*
- *Legal basis for investment claims*
 - Contractual arrangement between the host State and the foreign investor; or
 - Treaty between the host State and the State of the investor's nationality (the home State)

ISDS Mechanisms

- There are multiple forums for ISDS
 - Traditional ISDS Mechanisms
 - Domestic Courts
 - Diplomatic protection
 - Negotiations
 - Inter-state arbitration (e.g. *Barcelona Traction case*)
 - Modern ISDS Mechanisms
 - Investor- state arbitration
 - Ad hoc versus institutional arbitration
 - ICSID and others (e.g. UNCITRAL, PCA, ICC, SCC)



To provide proceedings for conciliation and arbitration of investment disputes between contracting states and nations of other contracting states



Foreign direct investors



To promote
FDI



To protect their investment
and nationals abroad

Art 54: Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State”

Breaching a contract with an investor, the host country breaches obligations included in investment treaty

An investor's claims based only on the contract under the international investment agreement

Assure foreign investors that they would receive protections from any unilateral engagement of a host country.

THANK YOU
FOR YOUR ATTENTION