



Defining the legal edge

Preventing and resolving PPP-related disputes

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EPLegal Limited

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Ho Chi Minh City, Vietnam

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1



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Legal Framework on PPP

DECREE 77/CP
On BOT contract
applicable to
domestic investment

1997

DECREE 78/2007/ND-CP
On investment in the
form of BOT, BTO, BT

2007

DECREE 108/2009/ND-CP
On investment in the
form of BOT, BTO, BT

2009

DECREE 15/2015/ND-CP
On investment in the form
of PPP and
DECREE 30/2015/ND-CP on
investor selection of the law
on bidding

2015

DECREE 63/2018/ND-CP
On investment in the
form of PPP

2018

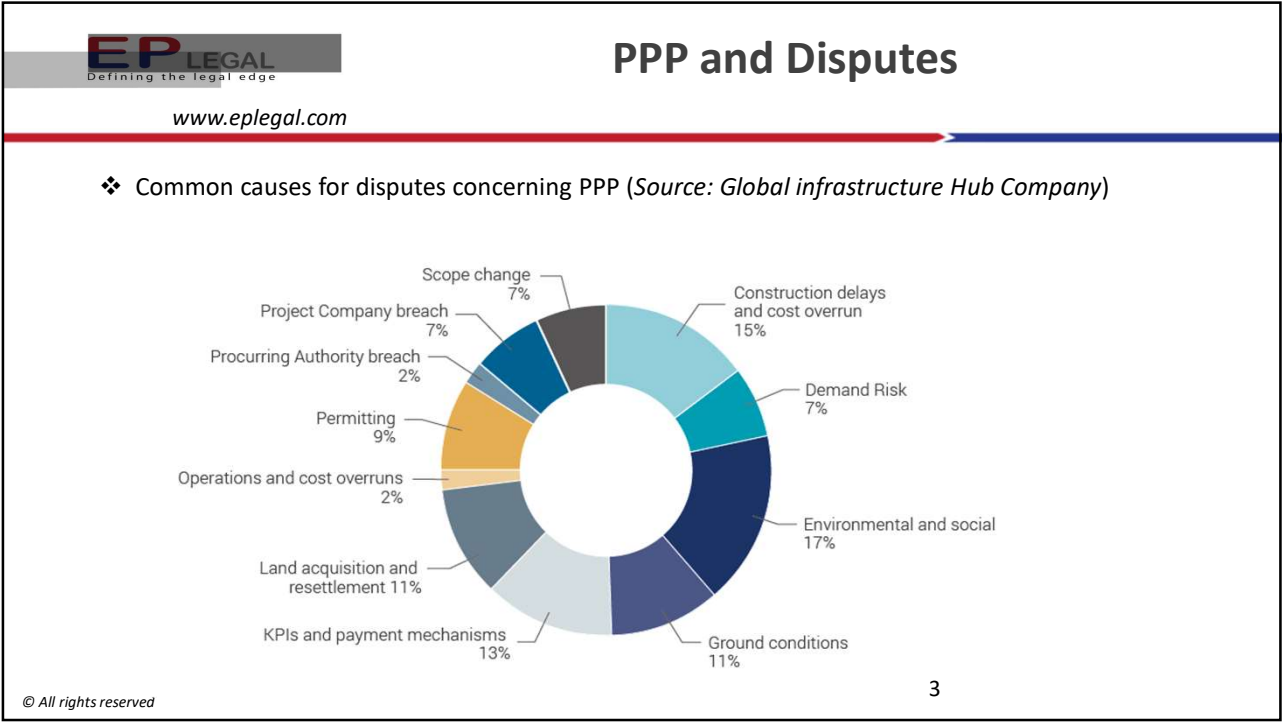
LAW ON PPP

2020

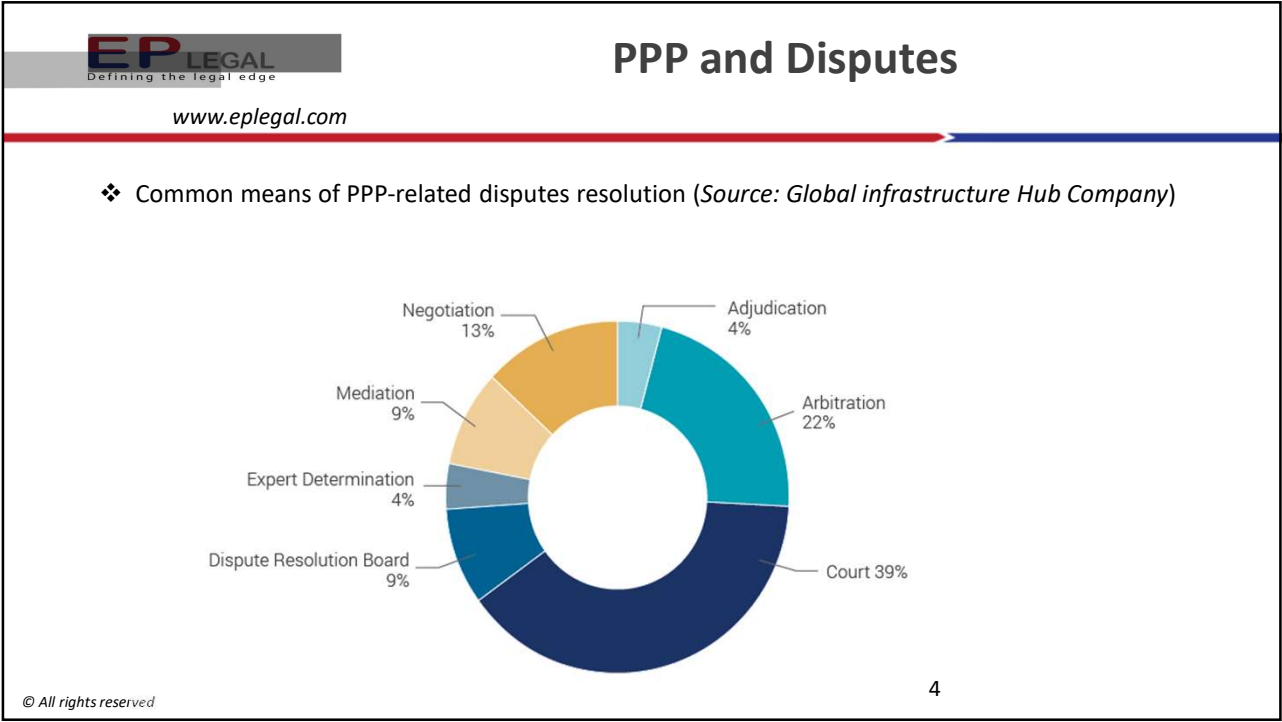
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2


2



3



4



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Risks in PPP Contracts

- Legal framework not clear
- Lack of Project preparations and evaluations
- Project information not transparent, hard to access for investor
- Direct appointment of investor, not bidding
- Slow in giving land, approval process for projects
- Investors' capability
- Capital arrangement and borrowing money
- Currency risks
- Cost management/ cost overrun
- Change in law
- Political Risk
- Geology structure of project site
- Changes in design, scope of the project
- Time management – project delay
- O&M of the project
- Ability of investors in paying debt
- Interest rate risk
- Inflation, devaluation of VNĐ

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5

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PPP-related Disputes in Vietnam

Dispute settlement methods

Art 67 Decree 63/2018

- Prioritise amicable dispute settlement
- Local investors: Vietnam's court or arbitration
- Foreign investor: free


Article 97 – PPP Law

- Negotiation, mediation, court, arbitration.
- Local investor: Vietnam's court or arbitration.
- Foreign investor: free??
- SPV/investors (1 foreign): free

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6

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PPP-related Disputes in Vietnam

Substantive governing law

Art 46 Decree 63/2018

The parties may agree on the use of foreign law to govern the contracts.


Article 55 – PPP Law

Vietnamese laws, except:

No provisions in Vietnamese laws
→ freedom of agreement but not against basic principles...

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7



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PPP-related Disputes in Vietnam

BOT Project – Phu My Bridge (Vietnamese investor – People’s Committee of HCM city)

- Project details: Construction period: 12/2005 – 1/2009, operation period in 26 years before transfer
- Reality: Delayed construction until 2/2007, operation phase started in 4/2010. The project was ultimately converted into public project and the People’s Committee of HCM city ends up shouldering investor’s debts.

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8



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PPP-related Disputes in Vietnam


BOT Project – Phu My Bridge (Vietnamese investor – People’s Committee of HCM)

- Causes of disputes
 - People’s Committee’s faults in commitment of other infrastructures connecting with the project
 - Investor’s faults in not putting money required for capital contribution, mortgage its right for toll fee to Banks to borrow money, not include debt into financial structure.
- Disputes settled by negotiation.

➡ Lesson: poor management; appointment of investor and examination of investor’s financial capacity not in compliance with required procedures;

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9



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PPP-related Disputes in Vietnam

BOT Highway No.53 (Long Ho – Ba Si)

- Project details: Vietnamese Investor, construction period: 5/2015 - 2017, operation period in 21 years 8 months before transfer
- Reality: The project was not commenced due to investor’s failure to secure loans as banks had tightened credit grants to the project. In 2018, the project was cancelled and transferred to public sector.
- Dispute settled by negotiation

➡ Lesson: unsuitable project’s assessment and design, difficulty in attracting loans

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10

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PPP-related Disputes in Vietnam

BOT Cai Lay Town Bypass

- Project details: Vietnamese investor, contract signed on 28/08/2014 providing that construction would be completed no later than 12/2015. Toll collection (operation phase) for 6 years 4 months 24 days.
- Reality: operation delayed until 01/08/2017; toll station not in designated location; toll rate opposed by drivers hence collection was discontinued.
- Ongoing dispute and negotiation, agreed solution of decreased toll rate so far.

➡

Lesson: transparency, assessment of toll rate, design toll station.

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11

11

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ADR in PPP-related Disputes

ADR

Dispute Review Boards

Negotiation

Mediation/ Conciliation

Adjudication

Arbitration

Expert Determina-
tion

Contractual

Judicial review


Investment treaties

- Commercial Arbitration
- Administrative challenge
- State-Investor arbitration


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12


12



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Trung tâm
Hòa giải
Việt Nam




Trung tâm
Hòa Giải
Việt Nam

VMC là Trung tâm Hòa giải
ĐẦU TIÊN tại Việt Nam



Lễ ra mắt
TRUNG TÂM HÒA GIẢI VIỆT NAM
Hà Nội, ngày 29 tháng 5 năm 2018




Với **Đội ngũ Hòa giải viên** là những **chuyên gia** trong nhiều lĩnh vực

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13

13



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ADR in PPP-related Disputes

HÒA GIẢI VIÊN VMC

28/05/2018


11 Hòa giải viên
Việt Nam




20/06/2020

38 Hòa giải viên
Việt Nam


Hòa giải viên
Nước ngoài **13**



Có **kinh nghiệm** trong hoạt động giải quyết tranh chấp



Có **uy tín** trong cộng đồng doanh nghiệp

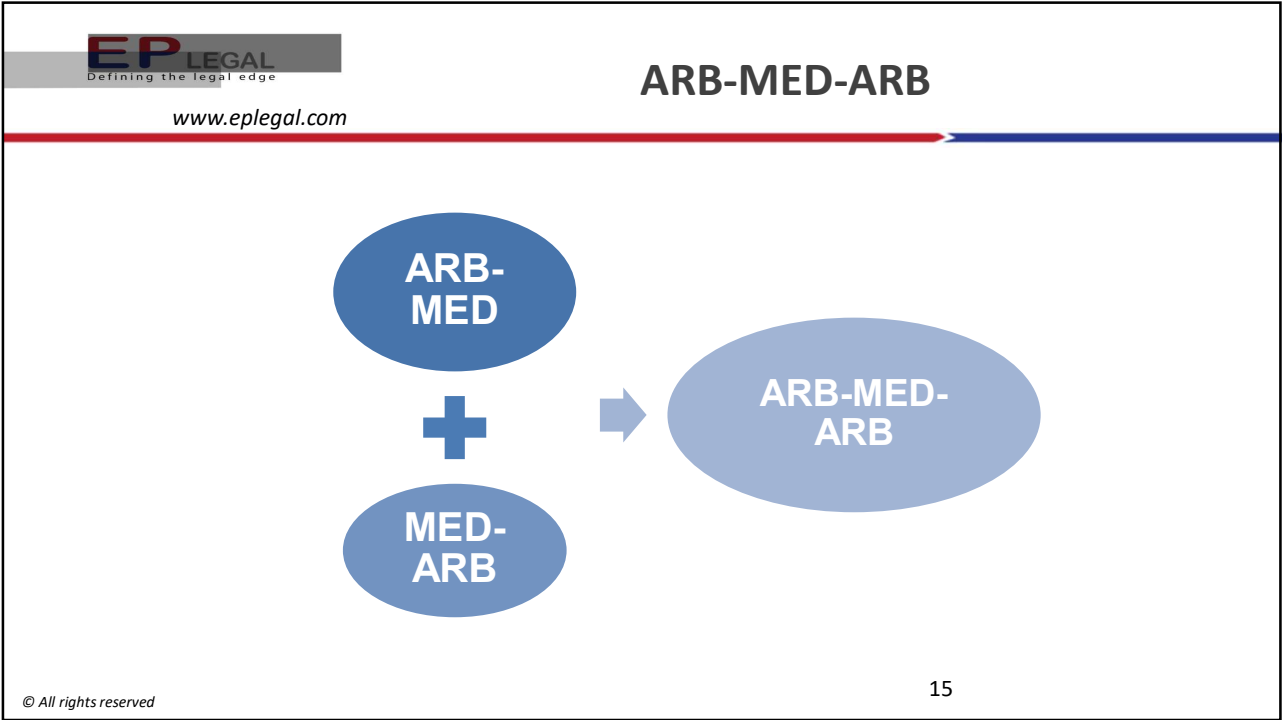


Có **đào tạo chuyên sâu** về hòa giải thương mại

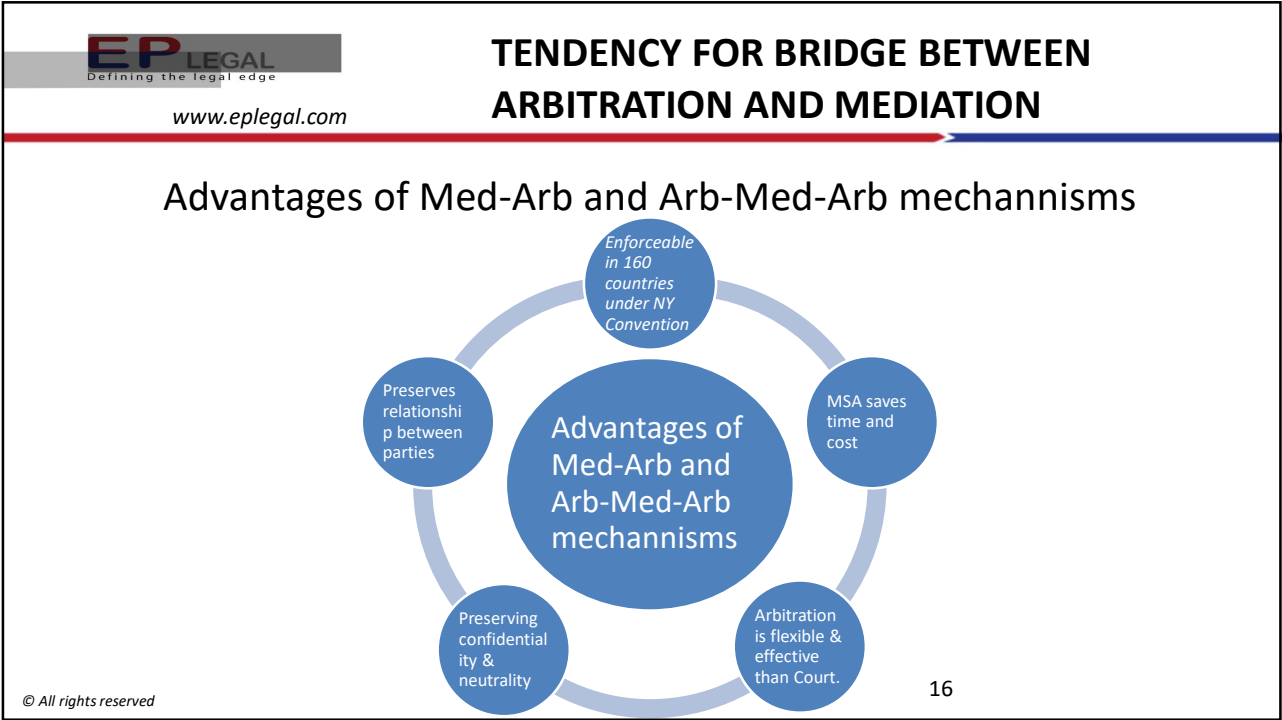
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14

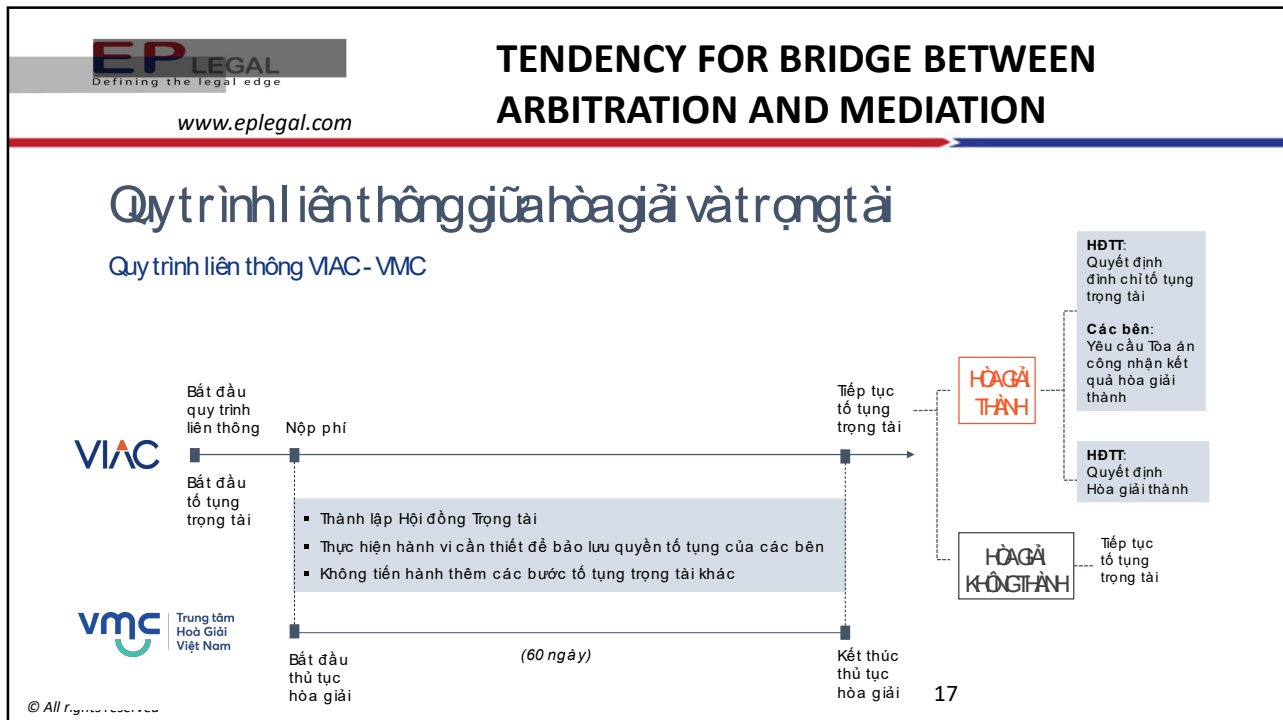
14




15



16



17



Recommendations

FOR PREVENTING DISPUTES

- Execution of PPP project must be transparent
- Careful contract planning with necessary preparation
- A complete legal framework as basis for disputes settlements
- Establishment of Systematic Investor Response Mechanism (SIRM)

FOR SETTLEMENT OF DISPUTES

- Good faith renegotiation/mediation so as to limit cost
- Consider combination of different means of ADR, e.g. Arb-Med-Arb

18



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THANK YOU !



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