



# Seminar on International Dispute Resolution in a Post-Pandemic Context:

Trends and Challenges



Hanoi, 17th January 2024 HCMC, 19th January 2024



No 171 Vo Thi Sau, District 3, Ho Chi Minh City
 (+84-28) 3 932 1632 - 0. (+84-28) 3 932 0119

#### Seminar on Resolution of International Disputes in a Post-Pandemic Era: Trends and Challenges

Ho Chi Minh city / January 19th 2024

Time	Content
1.30pm - 2pm	Registration
2pm - 2.10pm	Welcome speeches
	Institutional introductions
2.10pm – 2.30pm	<b>Mr. Phan Trong Dat</b> – Acting Director of Vietnam Mediation Centre (VMC) of VIAC
	Mr. Chuan Wee Meng – CEO of Singapore International Mediation Centre (SIMC)
	Keynote speeches
	<ul> <li>Facilitating settlements in International Arbitration</li> <li>Turning multi-million-dollar green energy/construction disputes into deals</li> </ul>
2.30pm – 3.30pm	<b>Mr. George Lim SC</b> – Chairman of Singapore International Mediation Centre (SIMC)
	Mr. Tony Nguyen – Deputy Director of Vietnam Mediation Centre (VMC) of VIAC
	<b>Ms. Hoang Nguyen Ha Quyen</b> – Managing Partner of LNT & Partners, VMC's Listed Mediator
	Panel discussion
	<u>Moderator:</u> <b>Mr. Phan Trong Dat</b> – Acting Director of Vietnam Mediation Centre (VMC) of VIAC
	<b>Mr. George Lim SC</b> – Chairman of Singapore International Mediation Centre (SIMC)
3.30pm – 4.10pm	Mr. Chuan Wee Meng – CEO of Singapore International Mediation Centre (SIMC)
	Mr. Tony Nguyen – Deputy Director of Vietnam Mediation Centre (VMC) of VIAC
	<b>Ms. Hoang Nguyen Ha Quyen</b> – Managing Partner of LNT & Partners, VMC's Listed Mediator
4.10pm – 4.40pm	Q & A
4.40pm – 5pm	Networking reception
5pm	Closing



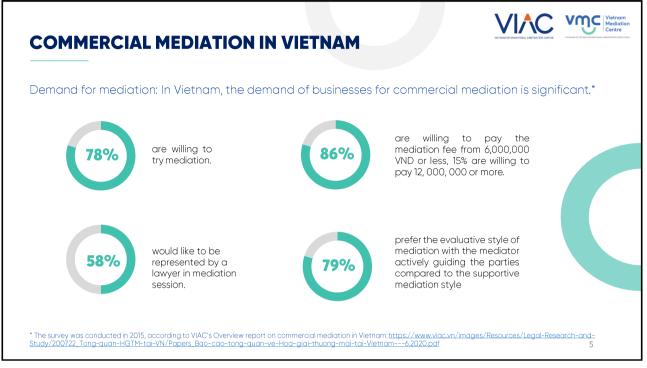
# Commercial Mediation in Vietnam









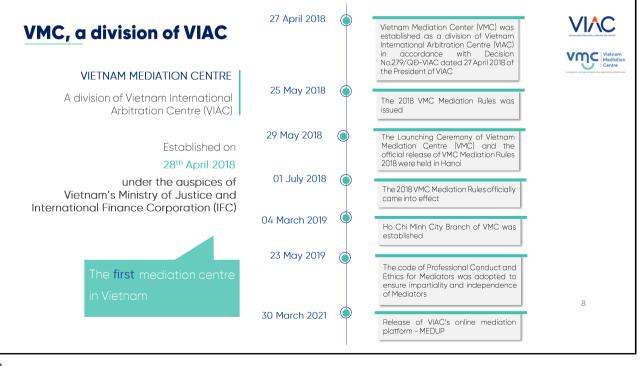








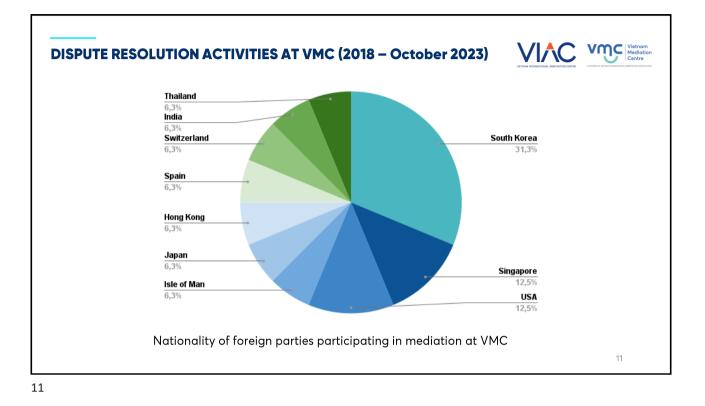




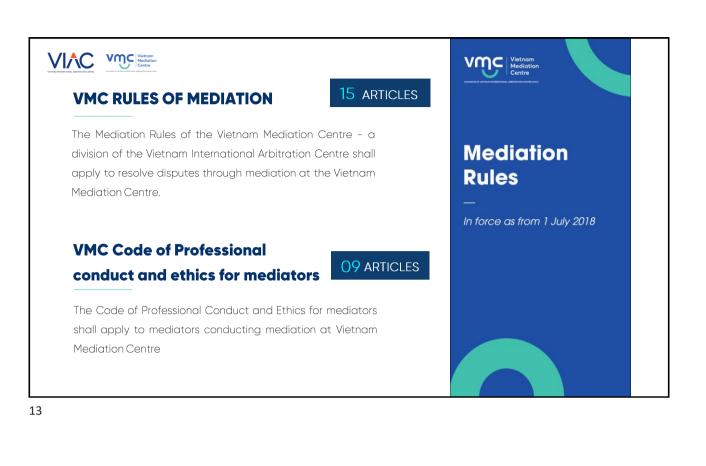












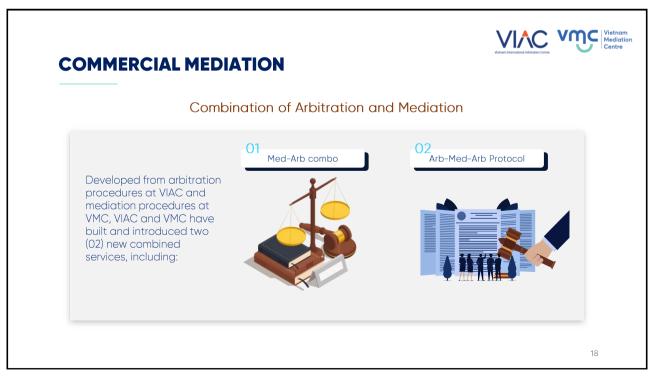


Signing MOU with SIMC – 30 August 2023









Vietnam VIETNAM INTERNATIONAL AND RELATION CONTRACT VIETNAM INTERNATIONAL AND RELATIONAL CONTRACT VIETNAM INTERNATIONAL CONTRACT VIETNAMINAL CONTRACT



# Thank You

#### VIETNAM MEDIATION CENTRE (VMC) a division of Vietnam International Arbitration Centre (VIAC

Add: No. 9 Dao Duy Anh Street, Dong Da District, Hanoi, Vietnam Tel: 024 3 574 4001 Website: <u>www.vmc.org.vn</u> Email: info@vmc.org.vn



## Introduction to Singapore International Mediation Centre (SIMC)

CHUAN WEE MENG, CEO SINGAPORE INTERNATIONAL MEDIATION CENTRE

Hanoi & Ho Chi Minh, Vietnam January 17 & 19, 2024

## SIMC – Our Beginnings



Not-for-profit institution specializing in mediation of cross-border commercial disputes

Launched in November 2014 by Singapore's Chief Justice, Mr. Sundaresh Menon and Minister for Law, Mr. K Shanmugam, SC

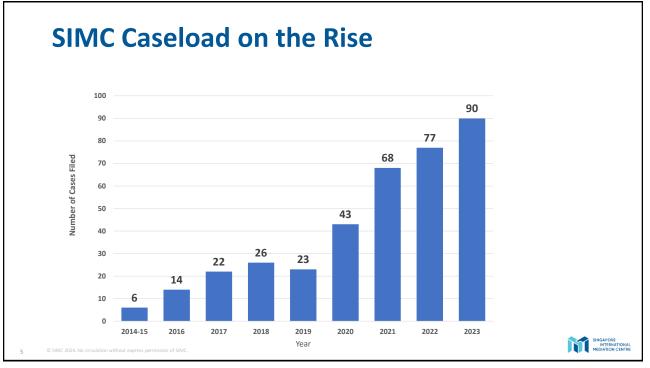
SINGAPORE INTERNATIONAL MEDIATION CENTRI

## **SIMC Services**

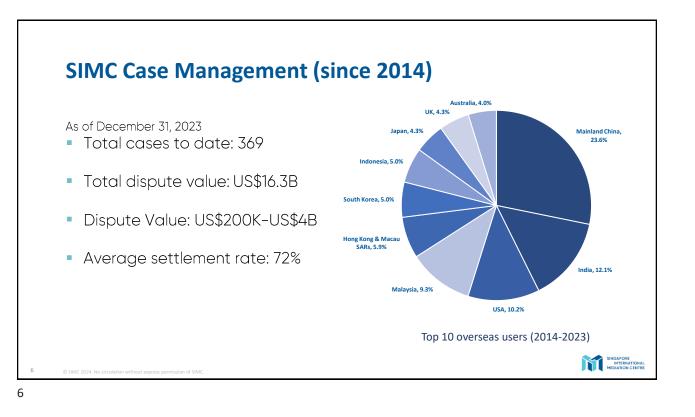
- 1. Case Management
- 2. Training
- 3. Promoting Mediation
- 4. Thought Leadership



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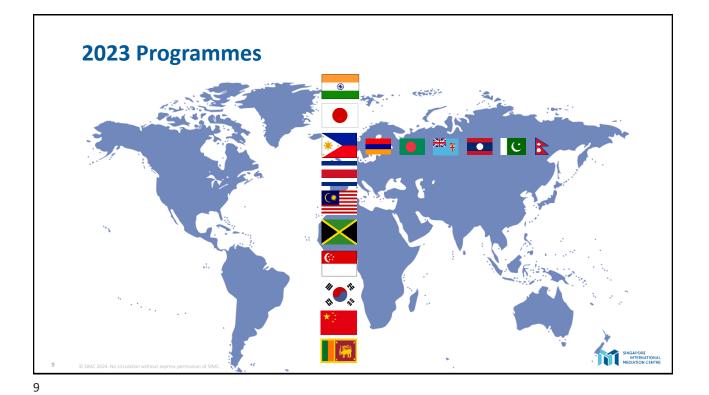




## **Geographical Origin of Parties** Users From Over 50 Jurisdictions

1.	Australia	15. France	29. Laos	43. Philippines
2.	Bahamas 👔	16. Germany	30. Liberia	44. Papua New Guinea
3.	Bahrain	17. Greece	31. Lithuania	45. Russia
4.	Bangladesh 👔	18. Hong Kong SAR	32. Luxembourg	46. Singapore
5.	Barbados 5	19. Macau SAR	33. Malaysia 💼	47. Spain
6.	Bermuda	20. India	34. Maldives (1) (1) (1) (1) (1) (1) (1) (1) (1) (1)	48. St Kitts & Nevis
7.	British Virgin Islands	21. Indonesia	35. Mauritius	49. Sweden
8.	Brunei	22. Iran 55	36. Mongolia	50. Switzerland
9.	Cambodia	23. Ireland	37. Myanmar	51. Taiwan
10.	Canada	24. Isle of Man	38. Namibia	52. Thailand
11.	Cayman Islands	25. Israel	39. Netherlands	53. UAE
12.	China	26. Italy	40. New Zealand	54. UK
13.	Cyprus	27. Japan	41. Norway	55. USA 🕤
14.	Finland	28. Korea	42. Pakistan	56. Vietnam
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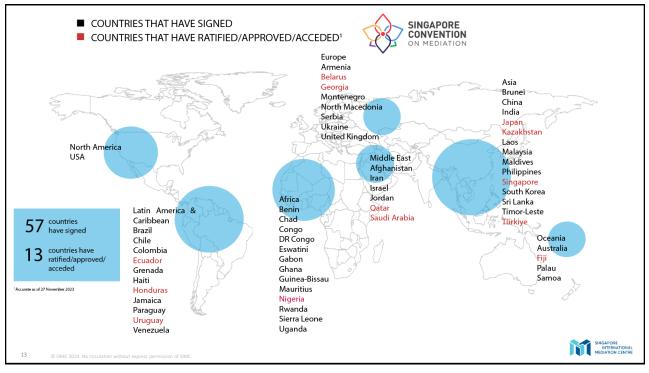


## 2023 Programmes



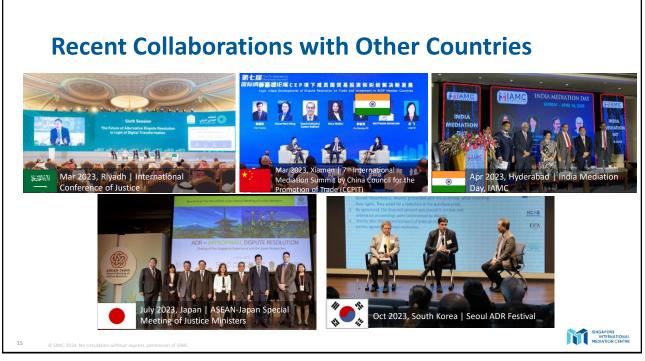


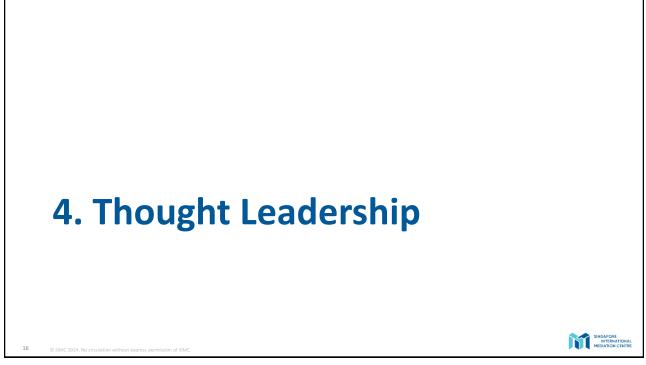




### MOU with Vietnam Mediation Centre on Aug 30, 2023















# MEDIATION

## The Next Game Changer

#### George Lim SC

Chairman Singapore International Mediation Centre January 2024 Vietnam





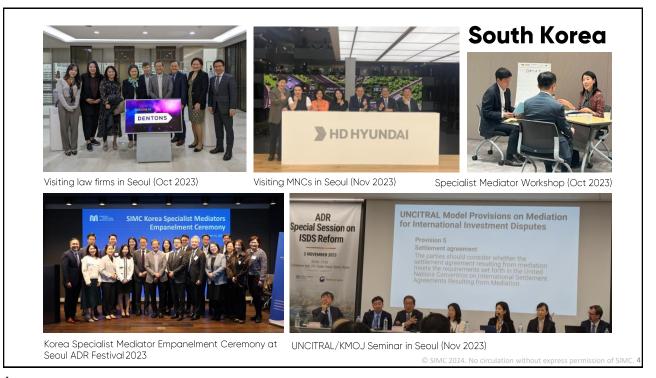


SIMC China Specialist Mediators Workshop, Shenzhen (Nov 2023) Visit by China's former Chief Justice Zhou Qiang (Sept 2018)



SIMC China Specialist Mediators Workshop, Shanghai (June 2018)

7th CCPIT International Mediation Summit, Xiamen (Mar 2023) © SIMC 2024. No circulation without express permission of SIMC.



Japan



SIMC Japan Specialist Mediators Workshop (May 2023)



Renewal of JIMC-SIMC Protocol (Aug 2023)



SIMC Japan Specialist Mediators Empanelment Ceremony (July 2023)



Seminar at Asean-Japan Special Meeting of Justice Ministers (July 2023)

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International Arbitration & Mediation Centre (IAMC India Mediation Day 2023

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Maldives & Sri Lanka workshop in Singapore (Oct 2022)



Maldives (Aug 2022)

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Maldives (Aug 2022)

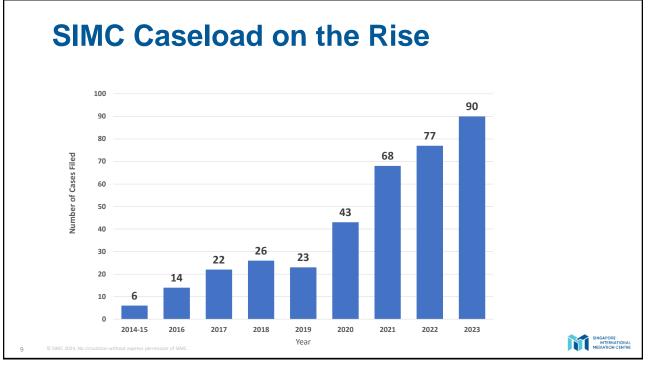




Pakistan seminar in Malaysia (Aug 2023)

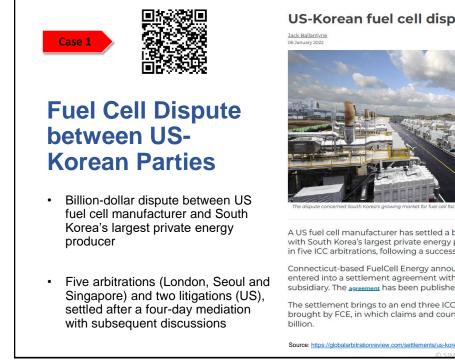
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#### US-Korean fuel cell dispute settles GAR



A US fuel cell manufacturer has settled a billion-dollar technology dispute with South Korea's largest private energy producer that had been playing out in five ICC arbitrations, following a successful mediation.

Connecticut-based FuelCell Energy announced on 27 December that it has entered into a settlement agreement with Korea's POSCO Energy and a subsidiary. The agreement has been published in a stock exchange filing.

The settlement brings to an end three ICC claims filed by POSCO and two brought by FCE, in which claims and counterclaims had exceeded US\$1

Source: https://globalarbitrationreview.com/settlements/us-korean-fuel-cell-dispute-settles



















#### SIMC Signature Event at Singapore Convention Week 2023 M BERNARD

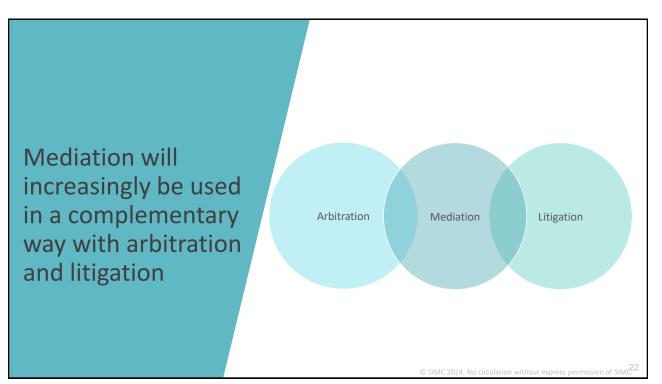
ASSOCIATIONS	COMPANIES		
Association of Corporate Counsel	· Accenture	· Mahindra & Mahindra	
Singapore Chapter	· Aditya Birla Group	<ul> <li>Marina Bay Sands</li> </ul>	
	· Aquila Capital	· Meta	
IPREX - A leading global	CapitaLand Investment	Microsoft	
communications and PR network	· DBS	<ul> <li>Mitsubishi HC Capital Asia</li> </ul>	
with over 1,100 professionals,	· Egon Zehnder	Nestle Singapore	
spanning across 100 markets	· Firmenich	· OCBC	
worldwide	· FuelCell Energy	PSA Corporation	
	· Grab	· Reliance Investment	
Singapore Corporate Counsel	· Hankyu Hanshin Expres	s · Robert Bosch	
Association	· Huawei	Samsung C&T Corporation	
	· IBM	· Siemens	
Singapore Business Federation	Jardine Cycle & Carriage	e · Sojitz Asia	
	· Johnson Controls	· Spencer Stuart	
	· Jones Lang LaSalle	· Splunk	
	· KONE	Surbana Jurong	
	· Kyndryl	· Tata Sons	
	· Lazada	· UOB	
	· LinkedIn	· Zuellig Pharma	

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HOA

GIAI

# A very Asian way of resolving disputes





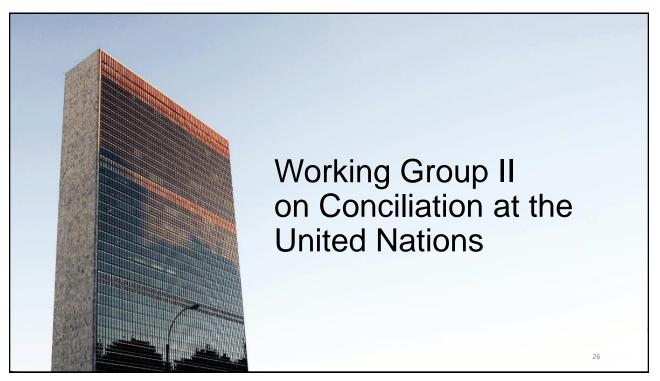




## **SURVEY (2014)**

Would you be more likely to mediate a dispute with a party from another country if you knew that country ratified a UN Convention on the Enforcement of Mediated Settlements and that consequently any settlement could be enforced there?

https://www.imimediation.org/wp-content/uploads/2018/06/IMI-UN-Convention







United Nations Convention on International Settlement Agreements Resulting from Mediation

#### Resolution adopted by the General Assembly on 20 December 2018

[on the report of the Sixth Committee (A/73/496)]

73/198. United Nations Convention on International Settlement Agreements Resulting from Mediation

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Table Law with a mondate to further the progressive humonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Recalling also its resolution 57/18 of 19 November 2002, in which it noted the adoption by the Commission of the Model Law on Interactinani Commercial Conciliation's and expressed the conviction that the Model Law, together with the Conciliation Rules of the Commission' renormanded in its resolution 55/35 of 4 December 1980, contributes significantly to the establishment of a harmonized legid framework for the fair and efficient settlement of disputes arising in international commercial relations,

Recognizing the value of mediation as a method of amicably settling putes arising in the context of international commercial relations,

Convinced that the adoption of a convention on international settlement agreements resulting from mediation that is acceptable to States with different legal, social and economic systems would complement the existing legal framework on international mediation and contribute to the development of harmonious international conomic relations,

Noting that the decision of the Commission to concurrently prepare a convention on international settlement agreements resulting

#### <sup>1</sup>Resolution 57/18, annex. <sup>2</sup>Official Records of the General Assembly, Thirty-fifth Session, 2

(A/35/17), para. 106; see also Yearbook of the United Nations Commission on Internation Trade Law, vol. XI: 1980, part three, sames II.

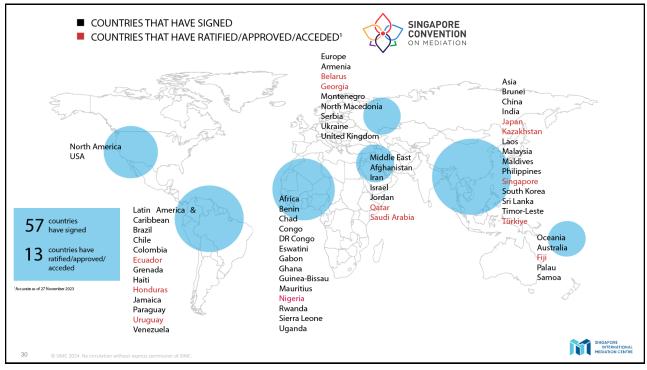
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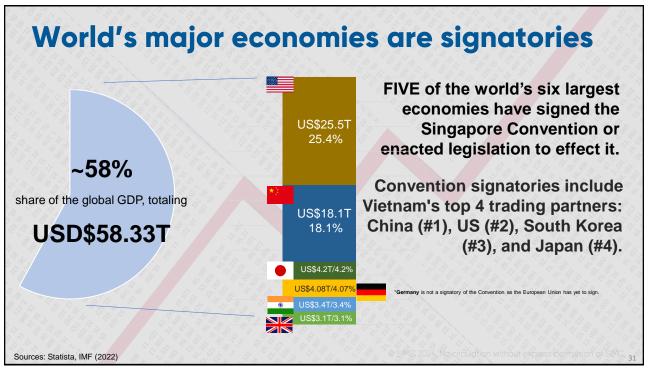
Image: UNCITRAL

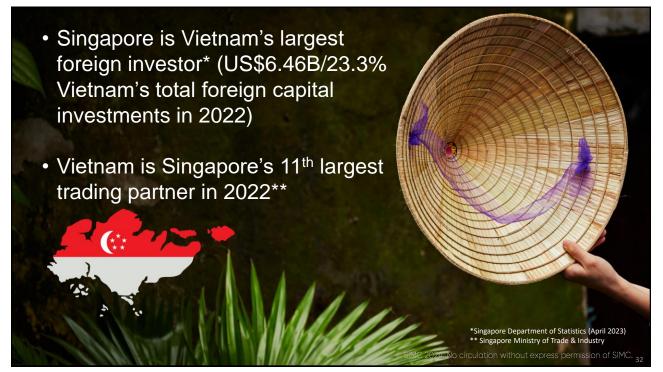
The General Assembly,















#### GAR Global Arbitration Review

## **US-Korean fuel cell dispute settles**

Jack Ballantyne 06 January 2022



The dispute concerned South Korea's growing market for fuel cell facilities (Credit: fuelcellenergy.com)

A US fuel cell manufacturer has settled a billion-dollar technology dispute with South Korea's largest private energy producer that had been playing out in five ICC arbitrations, following a successful mediation.

Connecticut-based FuelCell Energy announced on 27 December that it has entered into a settlement agreement with Korea's POSCO Energy and a subsidiary. The <u>agreement</u> has been published in a stock exchange filing.

The settlement brings to an end three ICC claims filed by POSCO and two brought by FCE, in which claims and counterclaims had exceeded US\$1 billion.

Korean counsel appeared in all five cases, POSCO using Kim & Chang and

FuelCell retaining Shin & Kim. In the two cases in which it was claimant, FCE also retained Wiley Rein in Washington, DC; while POSCO used Arnold & Porter in Seoul, San Francisco, Washington, DC and Shanghai.

The dispute arose from a series of technology transfer and licensing agreements signed between 2007 and 2012 that gave POSCO exclusive rights to manufacture and sell FuelCell's proprietary "SureSource" fuel cell technology in Asia. The fuel cells convert by-products into electricity without harmful emissions and are used in renewable power plants. FuelCell accused POSCO of breaching their licence agreements by spinning off its fuel cell business into subsidiary Korean Fuel Cell (KFC) in 2019. The following year, POSCO launched three ICC arbitrations seeking a combined US\$3.3 million for breach of warranty over alleged defects at its facility in Pohang on South Korea's east coast. It also obtained provisional attachments against FuelCell revenues in the Korean courts.

Three different tribunals were formed to hear those ICC cases, which were seated in Singapore and Seoul. POSCO appointed **Chiann Bao** of Arbitration Chambers as arbitrator in all three cases.

The first panel was chaired by Anneliese Day QC of Fountain Court and featured Peter Rees QC of 39 Essex Chambers; the second was chaired by Philippa Charles of Stewarts Law and included Canadian Craig Chiasson of Borden Ladner Gervais; and the third featured Dan Tan as president and Ekwan Rhow of Los Angeles firm Bird Marella as co-arbitrator.

Later in 2020, FuelCell said it terminated the licence agreements and filed two further ICC arbitrations, seeking US\$200 million from POSCO and KFC. It sought a declaration that POSCO's licence to market its products in Asia was void. The US company said it retained outside counsel on a contingency basis and that counsel entered into an agreement with a litigation finance provider to fund the arbitration.

POSCO filed counterclaims in both those cases exceeding US\$880 million, alleging that FuelCell had misrepresented the capabilities of its technology to induce it to enter the licence agreements and had failed to turn over knowhow sufficient for the Korean company to operate its business. It also sought a declaration that the licence agreement remained in effect.

Two tribunals were formed to hear those claims. One panel was seated in Singapore and consisted of Albert Jan van den Berg as chair, US judge Rosemary Barkett of the Iran-US Claims Tribunal as FuelCell's appointee and Duncan Matthews QC of Twenty Essex, appointed by POSCO.

James Castello of King & Spalding chaired the final panel, seated in London, which also included Barkett and Julian Lew QC of Twenty Essex as POSCO's nominee.

POSCO also sued FuelCell in the Southern District of New York for more than US\$1 million but the case was summarily dismissed. The Delaware Chancery Court also denied a statutory demand by POSCO to inspect FuelCell's books and records.

The parties' settlement follows a Singapore International Mediation Centre process conducted by mediator **George Lim SC**.

FuelCell says POSCO agreed to dismiss its claims with prejudice and that all disputes affecting market access are finally settled.

The company says the settlement agreement "confirms its exclusivity" to sell its own technology throughout Asia. The licence agreements have been amended rather than terminated, and POSCO will retain the right to service existing companies.

The US company will withdraw its objection to POSCO's spin-off and the settlement also contemplates KFC ordering 22 additional SureSource modules from FuelCell worth a total of US\$66 million.

Jason Few, president of FuelCell, says: "We are extremely pleased to have reached a favourable agreement with POSCO which confirms our access to the Asian market." He says it also clears the way for FuelCell to resume supporting "the growing energy transition within South Korea as well as the broader Asian marketplace."

Gregory Williams of Wiley Rein, counsel to FuelCell, says: "We are glad that FuelCell Energy was able to confirm its exclusive rights to the critical Korean and wider Asian markets moving forward."

The Korean company said in a statement: "POSCO is pleased that the parties were able through mediation to reach an amicable settlement and achieve a mutually beneficial outcome."

In the first arbitration (seated in Singapore)

<u>Tribunal</u>

- Anneliese Day QC (UK) (chair)
- Peter Rees QC (UK) (appointed by FCE)
- Chiann Bao (US) (appointed by POSCO)

In the second arbitration (seated in Singapore)

### <u>Tribunal</u>

- Philippa Charles (Ireland) (chair)
- Craig Chiasson (Canada) (appointed by FCE)
- Chiann Bao (US) (appointed by POSCO)

In the third arbitration (seated in Seoul)

#### <u>Tribunal</u>

- Dan Tan (Singapore) (chair)
- Ekwan Rhow (US) (appointed by FCE)
- Chiann Bao (US) (appointed by POSCO)

#### <u>Counsel to POSCO</u>

• Kim & Chang

Saeyoun Kim, Sungjean Seo, Joel Richardson, Seokchun Yun and HyeSung Kim, Theodore Weisman and Kang Kim in Seoul

#### FCE Counsel

• Shin & Kim

Partners Jae Min Jeon and Youngwon Yoon and senior foreign attorney Rockey Yoo, foreign attorney jihyuk song, associate Ja Young Kim, and Kimberly Kim in Seoul

In the fourth arbitration (seated in Singapore)

#### <u>Tribunal</u>

- Albert Jan van den Berg (the Netherlands) (chair)
- Rosemary Barkett (US-Iran) (appointed by FCE)
- Duncan Matthews QC (UK) (appointed by POSCO)

In the fifth arbitration (seated in London)

<u>Tribunal</u>

- James Castello (French) (chair)
- Rosemary Barkett (US-Iran) (appointed by FCE)
- Julian Lew QC (UK) (appointed by POSCO)

#### Counsel to FuelCell Energy

• Wiley Rein

Partners Greg Williams, Tatiana Sainati, Mark Sweet, Of COUNSels Joshua Simmons and Enbar Toledano, and associate Lukman Azeez in Washington, DC

• Shin & Kim

Partners Jae Min Jeon and Youngwon Yoon and senior foreign attorney Rockey Yoo in Seoul

Counsel to POSCO

Arnold & Porter

Partner Maria Chedid in San Francisco, associate Katelyn Horne in Washington, DC, partner

Anton Ware and associate Tereza Gao in Shanghai and partners James Lee and Junhee Kim in Seoul

• Kim & Chang

Saeyoun Kim, Sungjean Seo, Joel Richardson, Seokchun Yun and HyeSung Kim, Theodore Weisman and Kang Kim  $in\,Seoul$ 

**Related Topics** 

Settlements South Korea United States of America Commercial arbitration

Renewable energy

Jack Ballantyne

Author

jack.ballantyne@lbresearch.com

View full biography

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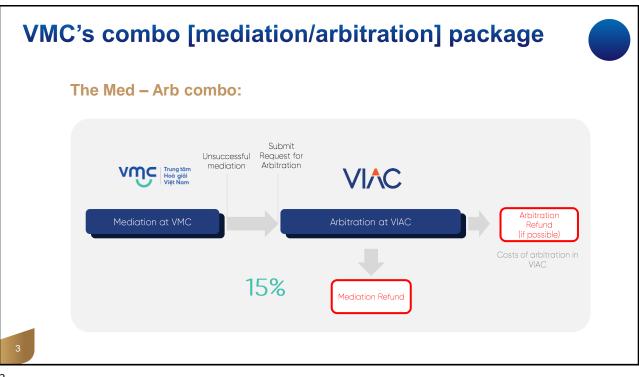


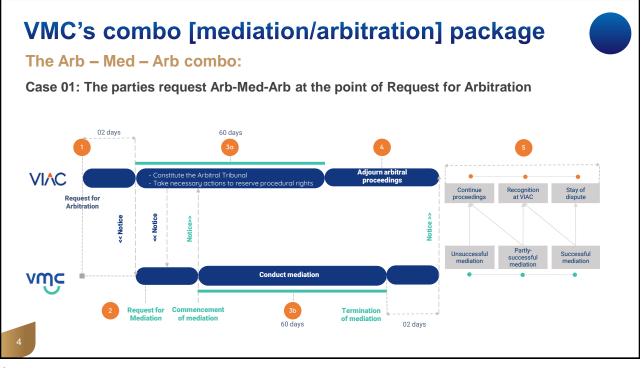
## VMC's combo [mediation/arbitration] package

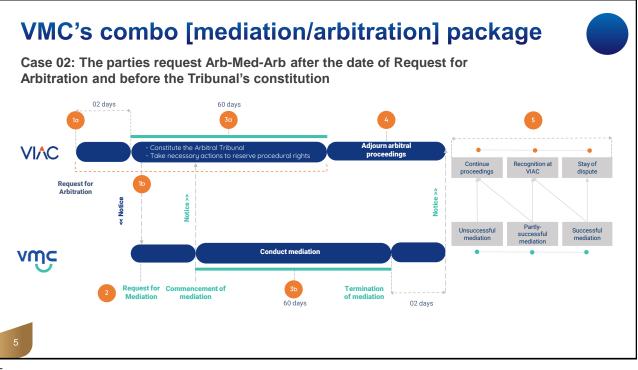
#### The first in Vietnam!

Developed from arbitration proceedings at VIAC and mediation processes at VMC, VIAC and VMC have developed and introduced two (02) new combined services, including:

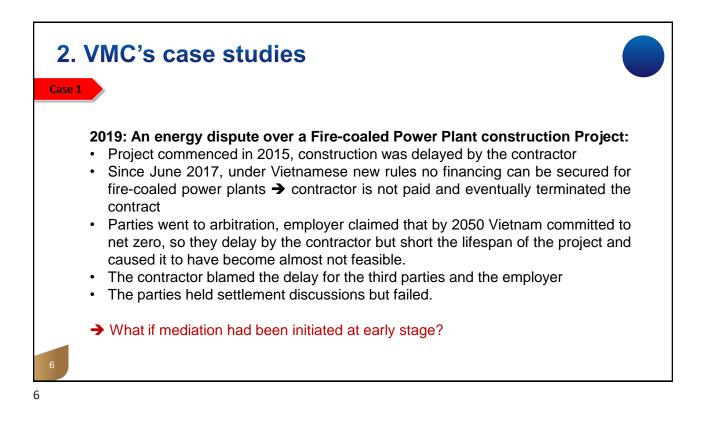












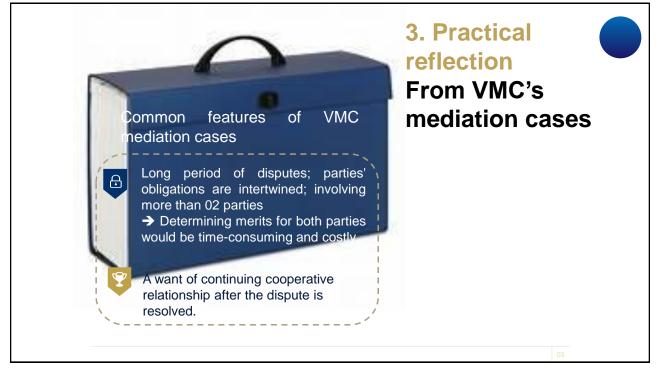
### 2. VMC's case studies

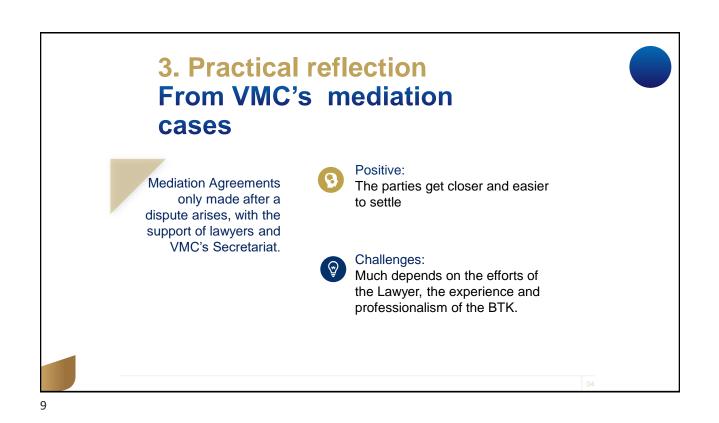
#### Case 2

#### 2020: An M&A dispute

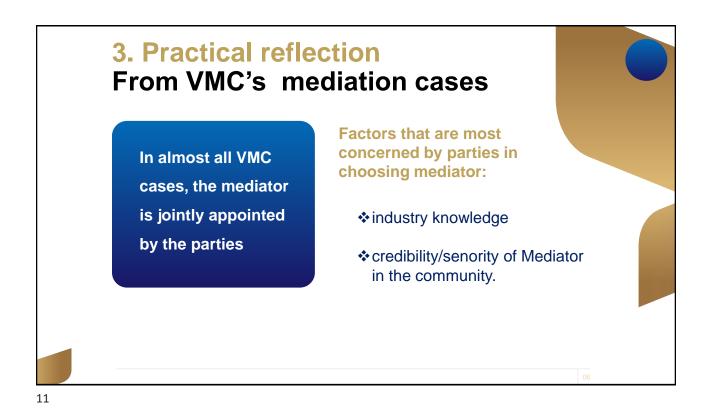
- A Korean investor decided to purchase 50% shares in a Vietnamese start-up after a quick due diligence process.
- · One of the terms of the SPA impose ESG disclosure by the seller
- Only after the take-over of the business, the buyer found out that the seller violated a number of employment regulations, including wrongfully declaring and paying social & health insurance contributions, the buyer sought to force buy-back shares.
- The buyer refused to buy back and said they used the proceeds for other investment and could not return the price.
- The buyer successfully obtained an arbitral award against the seller, but it was set aside by the court (for various reasons).

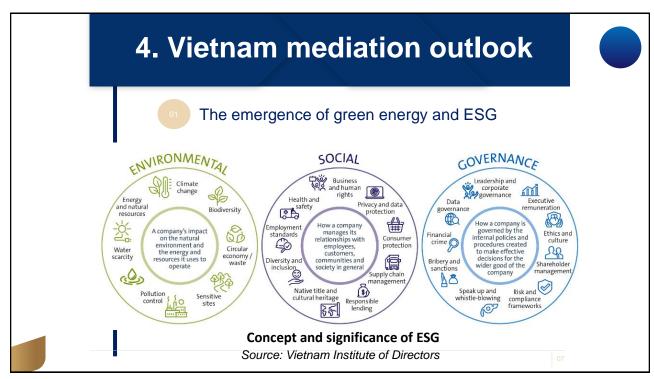
→ Settlement negotiation/mediation was suggested by the claimant's counsel on the basis that the shares still have value with the company's on-going operation.

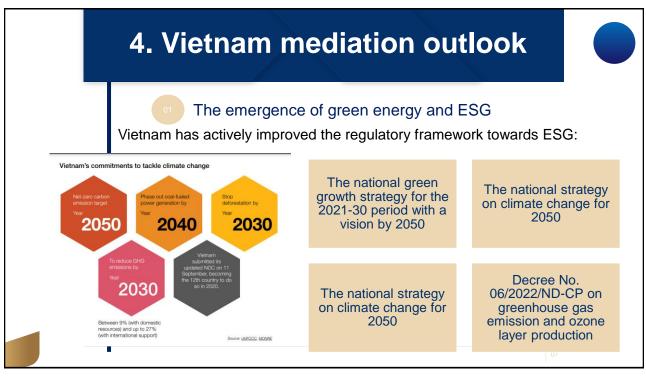


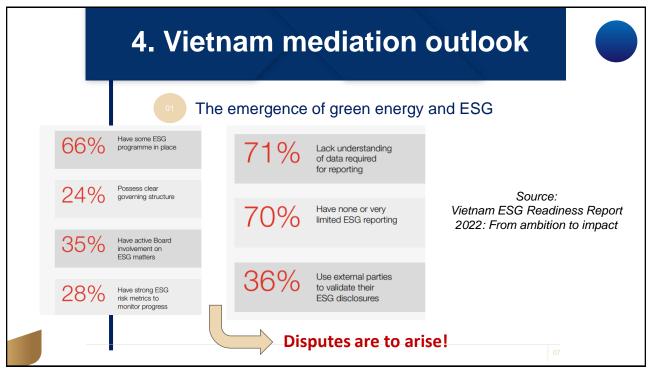








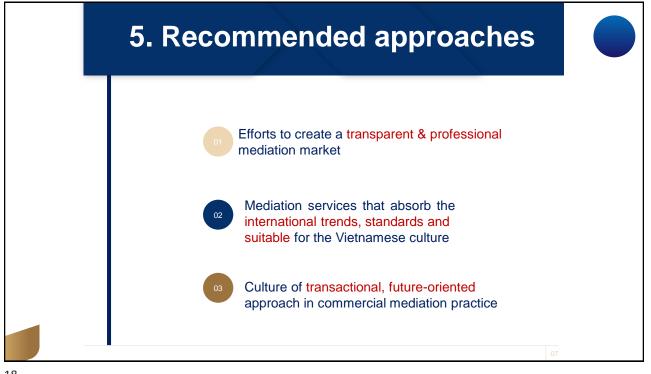






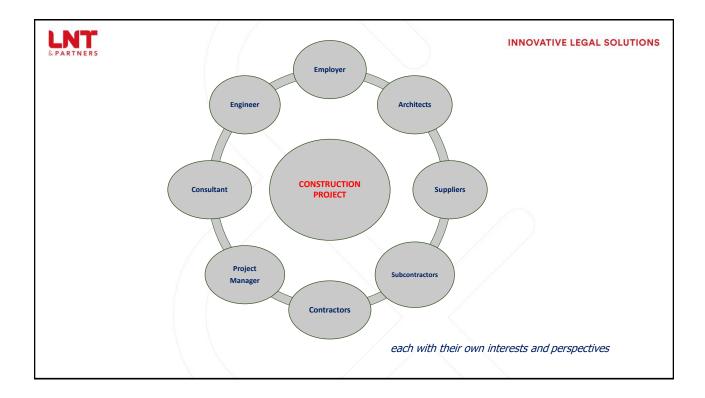


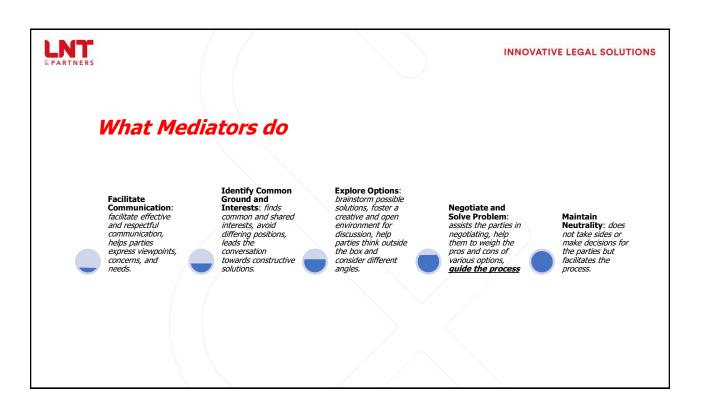


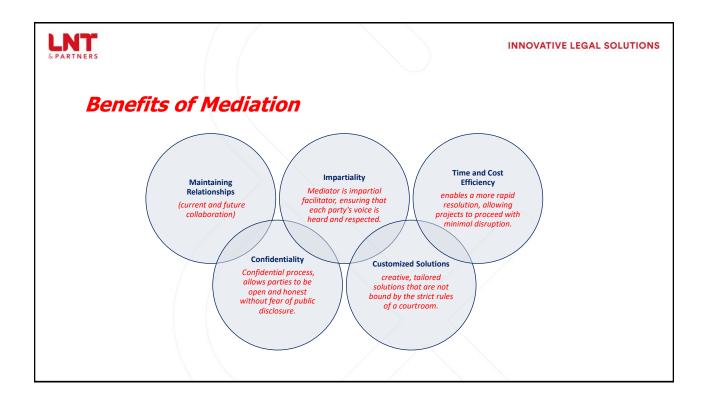


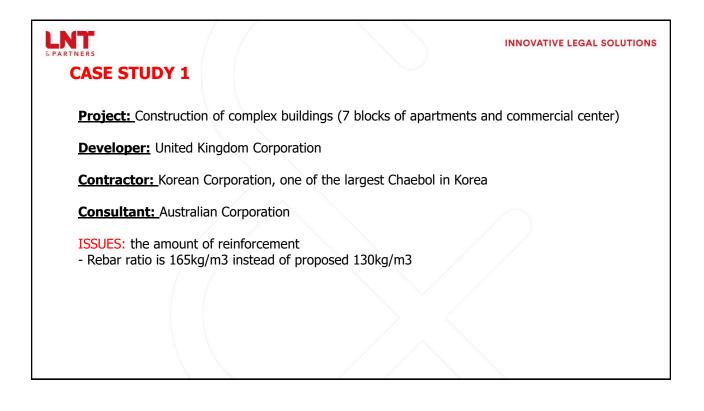














# CASE STUDY 1

#### INNOVATIVE LEGAL SOLUTIONS

#### **Contractor:**

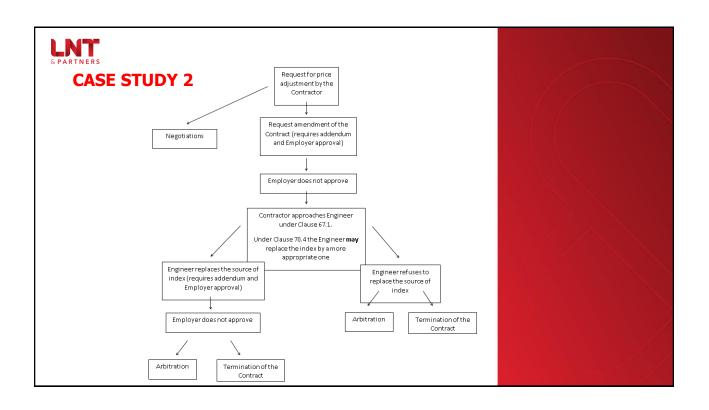
- Refuse to pay

- Claims: 38 billion dong as compensation "*reinforcement estimate is greater than the design target reinforcement quantities*"
- Submitted claims to the Court.

#### Consultant's Response:

- Design changes, Slab changes, Shear wall, and core wall changes, redesign of the ground floor, shophouse changes, increase water depth of the swimming pool.
- Should review through each of the stages of superstructure completion or reinforcement shop drawings before construction.
- Willing to clarify the source of reinforcement additions.
- Request for payment of outstanding amount.

# CASE STUDY 2 Project: Public transportation project Contractor: Japan Corporation Employer: People Committees of a province in Vietnam ("Authority") ISSUES: Price Adjustment due to Fluctuation



#### INNOVATIVE LEGAL SOLUTIONS

#### **CASE STUDY 2**

LNT

- Clause 70 of Contract: adjust Contract Price (increase or decrease) if there is fluctuation in the costs of major components of the Unit Price.
- ✤ If an index is not adequate, it may be replaced by the Engineer.
- The Claimant requested replace price indices for steel, sand, stone, and concrete products by the General Statistic Office, Hanoi, Vietnam, with the "GSO Specific Indices", and later on changed to Proxy" indices issued by the Department of Construction of the province where the project is located.

## CASE STUDY 2

#### **ICC Arbitration**

- Respondent challenges jurisdiction of the Tribunal
- Several hearings
- Thousand of exchanged communications
- 15 expert witnesses attended hearings
- 3 years
- After the final hearing, the parties decided to negotiate
- Both side have withdrawn their claims
- Respondent paid 25 million USD instead of 150 million USD claims

#### LNT APARTNERS CASE STUDY 3

#### VMC Mediation

- Dispute between a Corporation vs sole proprietorship
- During Covid-19 lock-down

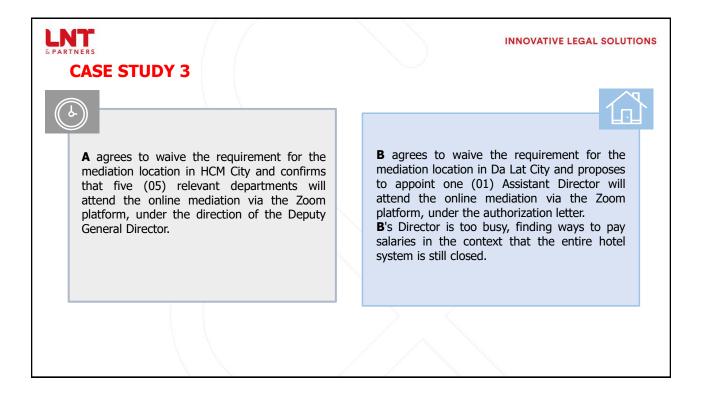


#### ARTNERS CASE STUDY 3

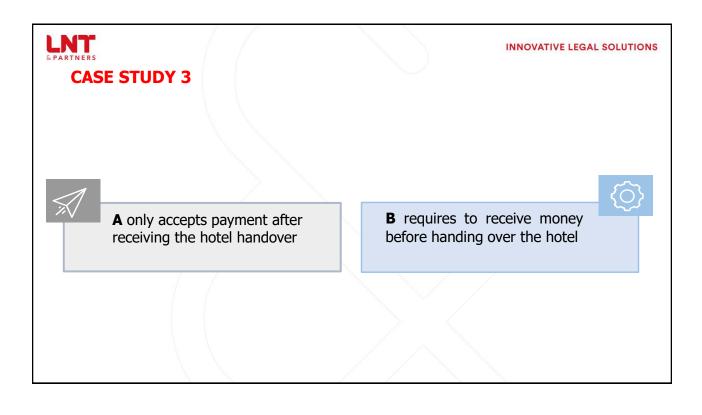
- Key personnel left/resigned long before
- No documents related to the claim amount of more than \$1.1 million could be found, and no one knew clearly why this amount was there.

Documents are left in many departments, and the chief accountant has retired → a lot of information was missing

- B's Director allows only 15 minutes to discuss.
- Party B requests the mediation location must be in Dalat City
- Request payment of \$3.3 million, which is the amount B has invested in the hotel. While A is currently proposing 40%.
- At the second discussion with the Assistant to Director, in addition to the dispute related to \$3.3 million, the Assistant further requests the return of \$1.05 million and a number of other small payments confirmed by both parties at a total of \$1.1 million.



LNT & PARTNERS CAS	E STUDY 3	INNOVATIVE LEGA	L SOLUTIONS
	According to <b>A</b> 's internal procedures, all draft agreements need to be reviewed by five (05) relevant departments before being submitted to Director for decision.	adviser due to facing many economic	





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#### INNOVATIVE LEGAL SOLUTIONS

# Thank you for your attention!

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