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Vietnam
Mediation
Centre



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LCT LAWYERS
Vietnam



VAW
2023



WORKSHOP ON
TRADE AND INVESTMENT
BETWEEN KOREA & VIETNAM:
FINDING OPPORTUNITIES IN ADVERSITIES

Hanoi, Vietnam | 08 May 2023 (Monday)

HỘI THẢO

THƯƠNG MẠI & ĐẦU TƯ
GIỮA HÀN QUỐC & VIỆT NAM:
TÌM KIẾM CƠ HỘI TRONG NGHỊCH CẢNH

Hà Nội | Thứ Hai, ngày 08 tháng 05 năm 2023

WORKSHOP AGENDA
TRADE & INVESTMENT BETWEEN KOREA AND VIETNAM:
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Hanoi, Vietnam | 08 May 2023 (Monday)

CHƯƠNG TRÌNH HỘI THẢO
THƯƠNG MẠI & ĐẦU TƯ GIỮA HÀN QUỐC & VIỆT NAM:
TÌM KIẾM CƠ HỘI TRONG NGHỊCH CẢNH
Hà Nội | Thứ Hai, ngày 08 tháng 05 năm 2023

Time Thời gian	Content Nội dung
7.30 am – 8.00am 07h00 – 08h00	Registration <i>Đăng ký đại biểu</i>
8.00 am – 8.20 am 08h00 – 08h20	Welcome remark <i>Phát biểu khai mạc</i>
	Dr. Vu Tien Loc Chairman and President of Vietnam International Arbitration Centre (VIAC), Deputy of Vietnam National Assembly TS. Vũ Tiến Lộc Chủ tịch Trung tâm Trọng tài Quốc tế Việt Nam (VIAC), Đại biểu Quốc hội Việt Nam
	Mr. Steve Kim Secretary General of Korean Commercial Arbitration Board (KCAB) Ông Steve Kim Tổng thư ký Ủy ban Trọng tài Thương mại Hàn Quốc (KCAB)
8.20 am – 8.40 am 08h20 – 08h40	Signing Ceremony between Vietnam International Arbitration Centre (VIAC) & Korean Chamber of Business in Vietnam (KOCHAM) <i>Lễ ký kết thỏa thuận hợp tác giữa Trung tâm Trọng tài Quốc tế Việt Nam (VIAC) và Hiệp hội Doanh nghiệp Hàn Quốc tại Việt Nam (KOCHAM)</i>
Session 01: Current landscape, adversities, and opportunities in prominent sectors of Vietnam <i>Phiên 01: Bối cảnh, thách thức và cơ hội trong một số ngành nổi bật tại Việt Nam</i>	
8.40 am – 9.20 am 08h40 – 09h25	Mr. Dau Anh Tuan Vice Secretary General cum Head of Legal Department, Vietnam Chamber of Commerce & Industry (VCCI) Ông Đậu Anh Tuấn Phó Tổng thư ký kiêm Trưởng ban Pháp chế, Liên đoàn Thương mại & Công nghiệp Việt Nam (VCCI)
	Mr. Hong Sun Chairman, Korea Chamber of Business in Vietnam (KOCHAM) Ông Hong Sun Chủ tịch Hiệp hội doanh nghiệp Hàn Quốc tại Việt Nam
9.20 am – 9.50 am 09h20 – 09h50	Discussion Thảo luận Moderator: Mr. Phan Trong Dat Acting director of Vietnam Mediation Centre (VMC) Điều phối viên: Ông Phan Trọng Đạt Quyền Giám đốc Trung tâm Hòa giải Việt Nam (VMC)
9.50 am – 10.00 am 09h50 – 10h00	Tea break <i>Nghỉ giải lao</i>
Session 02: M&A trends during economic vicissitudes – From the transactional & dispute management viewpoints/Phiên 02: Xu hướng M&A trong giai đoạn kinh tế nhiều biến động <i>– Từ góc nhìn quản lý các giao dịch và tranh chấp</i>	
10.00 am – 11.20 am 10h00 – 11h20	Mr. Lee Myung Jae Partner, Head of Asia Team, Yulchon LLC Ông Lee Myung Jae Luật sư thành viên, Đại diện khu vực châu Á, Công ty Luật Yulchon
	Mr. Doan Nhat Minh Senior Associates at VILAF Ông Doãn Nhật Minh Luật sư Cộng sự cao cấp tại công ty luật VILAF

Time <i>Thời gian</i>	Content <i>Nội dung</i>
	<p>Ms. Vu Thi Hang Deputy Director of the VIAC Secretariat <i>Bà Vũ Thị Hằng</i> Phó trưởng Ban thư ký Trung tâm Trọng tài Quốc tế Việt Nam (VIAC)</p> <p>Mr. Steve Kim Secretary General of KCAB <i>Ông Steve Kim</i> Tổng thư ký Ủy ban Trọng tài Thương mại Hàn Quốc (KCAB)</p>
<p>11.20 am – 11.50 am <i>11h20 – 11h50</i></p>	<p>Discussion <i>Thảo luận</i></p> <p>Moderator: Mr. Logan Leung Deputy Managing Partners at Rajah & Tann LCT Lawyers <i>Điều phối viên Ông Mr. Logan Leung</i> Phó Luật sư điều hành Công ty luật Rajah & Tann</p>
<p>11.50 am – 12.00 pm <i>11h50 – 12h00</i></p>	<p>Closing remark <i>Kết thúc phiên</i></p>



AN INTRODUCTION

VIETNAM: Economy & Policy

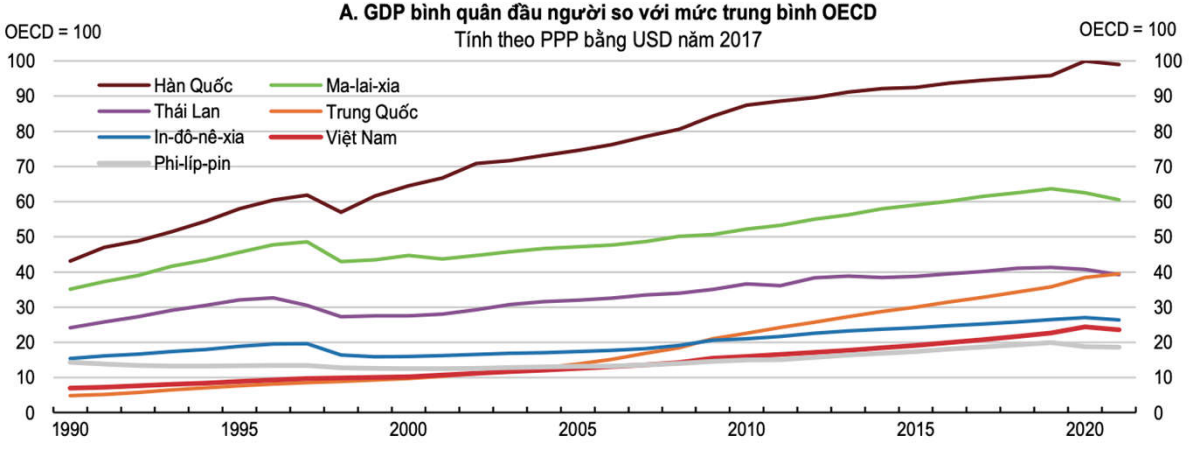
Dau Anh Tuan

Vice General-Secretary,
Director General of Legal Department,
Vietnam Chamber of Commerce and Industry (VCCI)



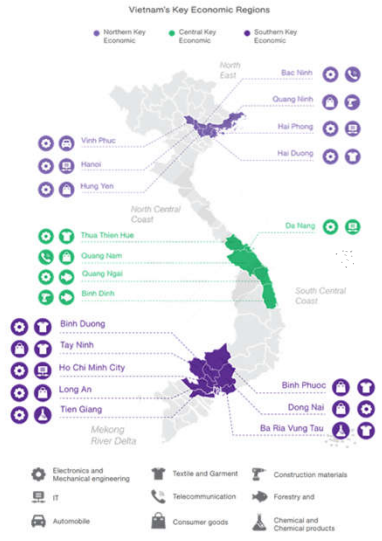
VIETNAM AT A GLANCE





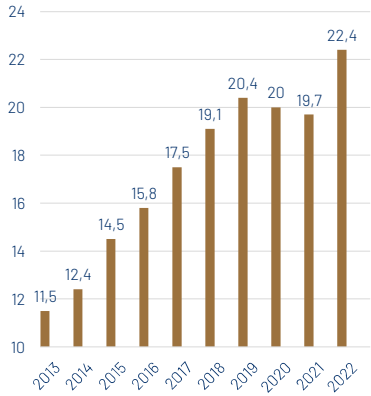
Vietnam in 2022 at a glance

- 8.02%
Real GDP Growth Rate
- 10.6%
Export Growth Rate
- 19.8%
Retail Sales Growth
- USD 22.39 billion
FDI Disbursement
- 2,036
Granted Investment Certificates
- 141
Investor Countries and Territories

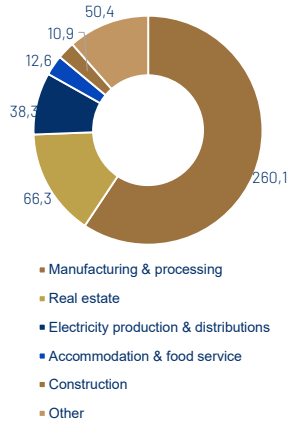




FDI Disbursement
(USD Billion)



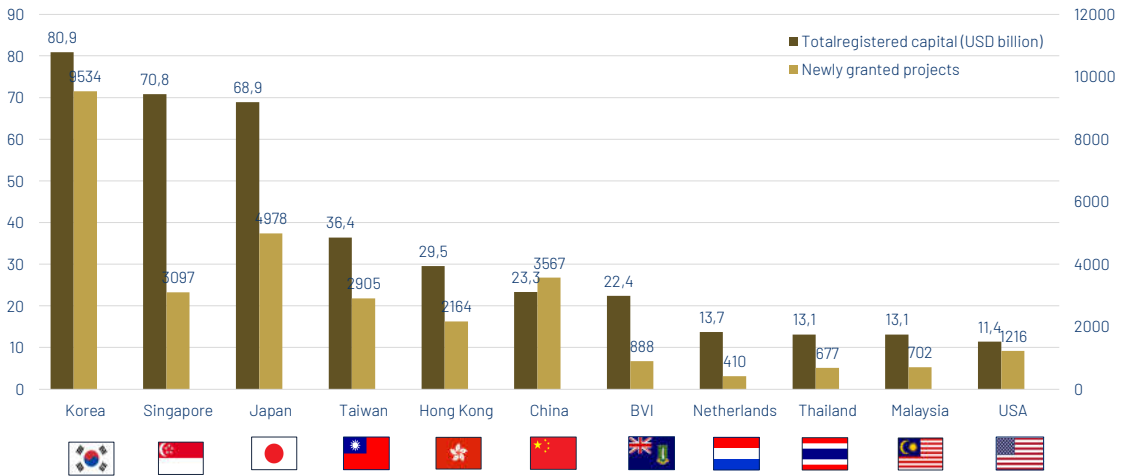
FDI By Sectors
(USD Billion)



FDI By Region



USD billion



Vietnam's Competitive Advantages



Competitive Labor & Land / Office Costs



Tax & Fee Reduction Incentives



Favorable Policy Environment



FTA & Trade Integration



















Supply Chain Diversification



Growing Income & Consumer Base

Vietnam's Trade Agreements

									
	Inforce	Signed	Inforce	Not Signed	Not Signed	Inforce	Not Signed	Inforce	Not Signed
	Not Signed	Inforce	Inforce	Not Signed		Inforce	Not Signed	Not Signed	Not Signed
	Inforce	Inforce	Inforce	Not Signed	Inforce	Inforce	Not Signed	Inforce	Inforce
	Inforce	Inforce	Inforce	Not Signed	Inforce	Inforce	Not Signed	Inforce	Inforce
	Inforce	Inforce	Inforce	Not Signed	Inforce	Inforce	Not Signed	Inforce	Not Signed
	Inforce	Inforce	Inforce	Not Signed	Inforce	Inforce	Not Signed	Inforce	Not Signed
	Inforce	Inforce	Inforce	Inforce	Inforce	Inforce	Inforce	Inforce	Inforce

■ Signed
 ■ Not Signed
 ■ Inforce

Free Trade Agreements

ASEAN

Association of Southeast Asian Nations
*ASEAN has multilateral trade agreements with India, China, New Zealand, Australia, Japan, South Korea, and Hong Kong

CPTPP

Comprehensive and Progressive Agreement for Trans-Pacific Partnership

EVFTA

Vietnam – European Union FTA

UKVFTA

UK – Vietnam FTA

RCEP

Regional Comprehensive Economic Partnership

VJEPA

Vietnam – Japan FTA

VKFTA

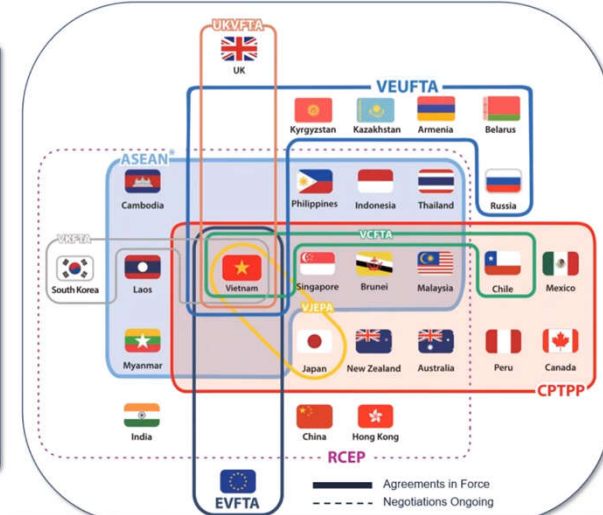
Vietnam – South Korea FTA

VCFTA

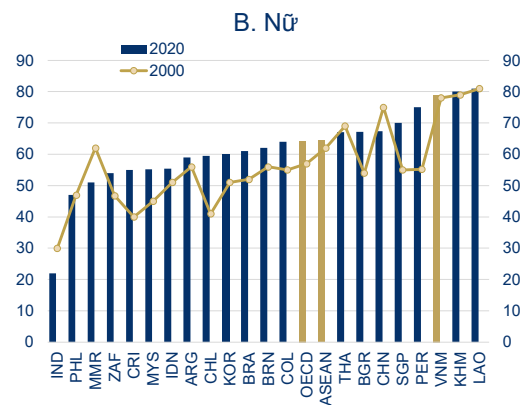
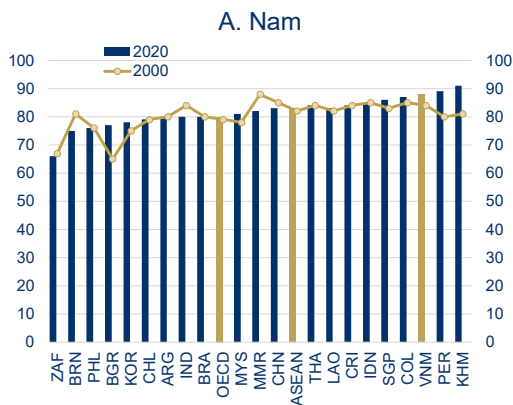
Vietnam – Chile FTA

VEUFTA

Vietnam Eurasian Economic Union FTA



Theo tỷ lệ % của dân số trong độ tuổi lao động, từ 15 – 64 tuổi



Ghi chú: ARG = Ác-hen-ti-na, BGR = Bun-ga-ri, BRA = Bra-xin, BRN = Bru-nây, CHL = Chi-lê, CHN = Trung Quốc, COL = Cô-lôm-bia, CRI = Cô-xta Ri-ca, IDN = In-đô-nê-xia, IND = Ấn Độ, KHM = Cam-pu-chia, KOR = Hàn Quốc, LAO = CHDCND Lào, MMR = Mi-an-ma, MYS = Ma-lai-xia, PER = Pê-ru, PHL = Phi-líp-pin, SGP = Xinh-ga-po, THA = Thái Lan, VNM = Việt Nam, ZAF = Nam Phi.

Nguồn: World Bank. World Development Indicators database.

Khung pháp luật của Việt Nam cho nhà đầu tư nước ngoài

VAV VIETNAM ADR
WEEK 2023

Hệ thống pháp luật Việt Nam có nguyên tắc chung là không phân biệt đối xử giữa nhà đầu tư trong nước và nhà đầu tư nước ngoài.



MỘT SỐ NGOẠI LỆ



Quyền sử dụng đất

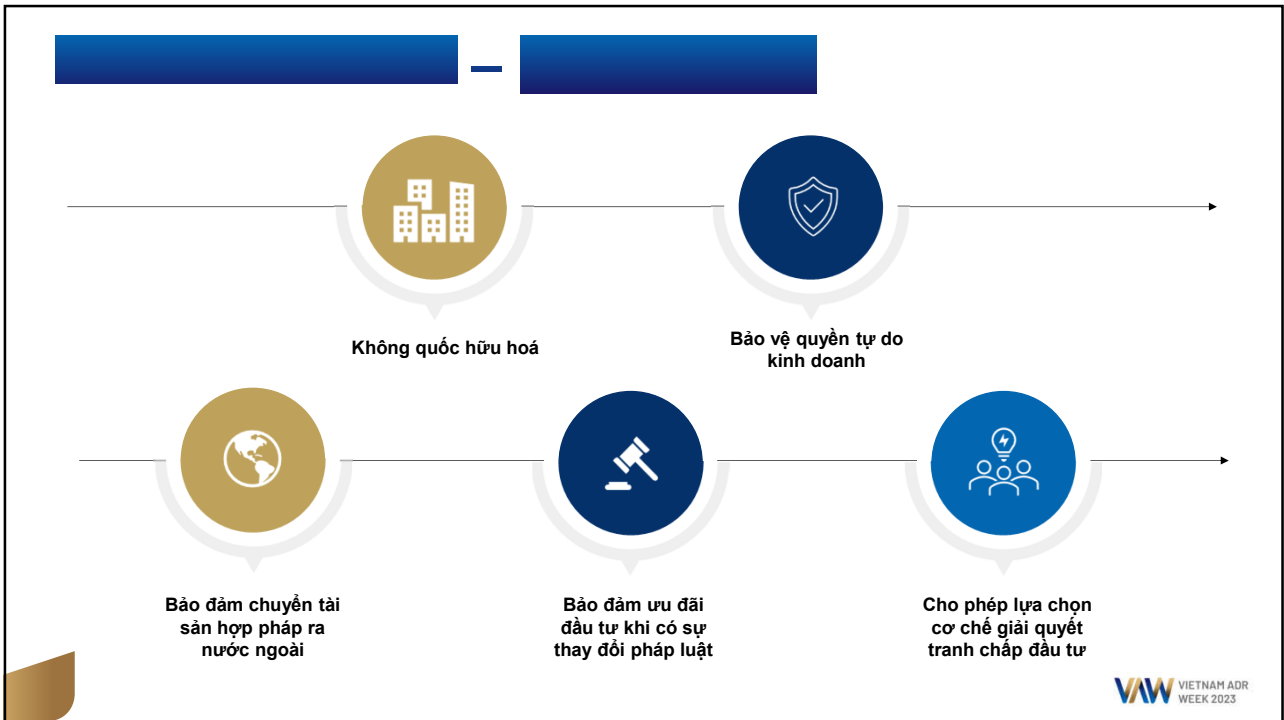


Điều kiện tiếp cận thị trường đối với nhà đầu tư nước ngoài



Thủ tục đầu tư đối với nhà đầu tư nước ngoài

VAV VIETNAM ADR
WEEK 2023





25 ngành nghề chưa được tiếp cận thị trường

59 ngành nghề tiếp cận thị trường có điều kiện



Nghị định 31/2021/NĐ-CP



nhà đầu tư nước ngoài

Tùy hình thức đầu tư tương ứng với thủ tục khác nhau:

- Thành lập doanh nghiệp
- Mua phần vốn góp, mua cổ phần
- Thực hiện dự án đầu tư
- Hợp đồng BCC

Quy tắc chung:

- Trên 50% vốn nước ngoài thì phải làm thủ tục
- Áp dụng cho cả F1 và F2 trở lên

Ngành nghề cấm, ngành nghề đầu tư kinh doanh có điều kiện



Các ngành nghề có nguy cơ ảnh hưởng đến lợi ích công cộng



Áp dụng chung cho cả nhà đầu tư trong nước và nước ngoài



Điều 6 và Phụ lục IV Luật Đầu tư



01

Nhà đầu tư nước ngoài chỉ có quyền sử dụng đất thuê (có thời hạn).

02

Nhà đầu tư nước ngoài được bảo đảm quyền sử dụng, thế chấp, chuyển nhượng, cho thuê lại, hưởng dụng từ đất.

03

Không được thế chấp cho ngân hàng nước ngoài, chỉ được thế chấp ngân hàng trong nước.



Mục đích

Hạn chế lao động phổ thông



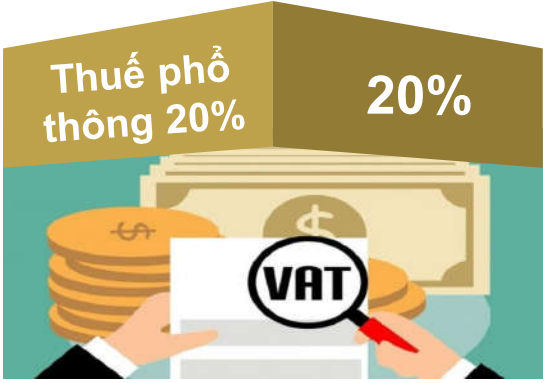
Điều kiện

Người quản lý doanh nghiệp, hoặc
Có trình độ chuyên môn (bằng cấp, kinh nghiệm làm việc)



Việt Nam có nhiều chương trình ưu đãi thuế, tùy điều kiện áp dụng:

- Một số lĩnh vực, ngành nghề
- Số lượng lao động
- Địa bàn đầu tư
- Công nghệ cao
- Chuẩn bị cho thuế tối thiểu toàn cầu





Việt Nam bảo đảm
chuyển tài sản ra
nước ngoài

Mua tiền Việt khá dễ
dàng, chỉ cần mở tài
khoản tại ngân hàng
thương mại

Mua ngoại tệ số lượng
lớn: Cần chứng minh
nguồn gốc tài sản hợp
pháp (ví dụ, hồ sơ thuế)

VWV VIETNAM ADR
WEEK 2023

VWV
2023

**Thank you for
your attention!**



DAU ANH TUAN

*Vice General-Secretary,
Director General of Legal Department,
Vietnam Chamber of Commerce and
Industry (VCCI)*
dauanhtuan@gmail.com

Korea-Vietnam M&A status and the opportunity from ASEAN perspective

May 8, 2023

Yulchon LLC.

LEE Myung Jae (MJ)

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Foreign Direct Investment of Korea

	USD million				
	2018	2019	2020	2021	2022
New entity set up (#)	3,557	4,018	2,429	2,338	2,588
Invested amount	51,749	65,447	57,352	76,835	77,167

Source: KOSIS (Korean Statistical Information Service)



Korea FDI by Industry

	USD Million				
	2018	2019	2020	2021	2022
Finance & Insurance	17,824	26,172	18,849	29,533	29,696
Manufacturing	16,271	18,640	13,183	18,305	23,589
Real Estate	5,427	8,006	7,404	7,033	7,072
Wholesale & retail	2,489	2,155	2,968	3,692	2,580
Construction	1,649	848	1,634	839	536
IT	1,666	942	4,138	6,934	3,667
Mining	1,787	2,618	1,956	1,924	2,315
Energy (Elec, Gas, Steam etc.)	1,099	1,766	3,582	2,826	2,961

Source: KOSIS



Korea FDI by Regions

USD million
(New Entity #)

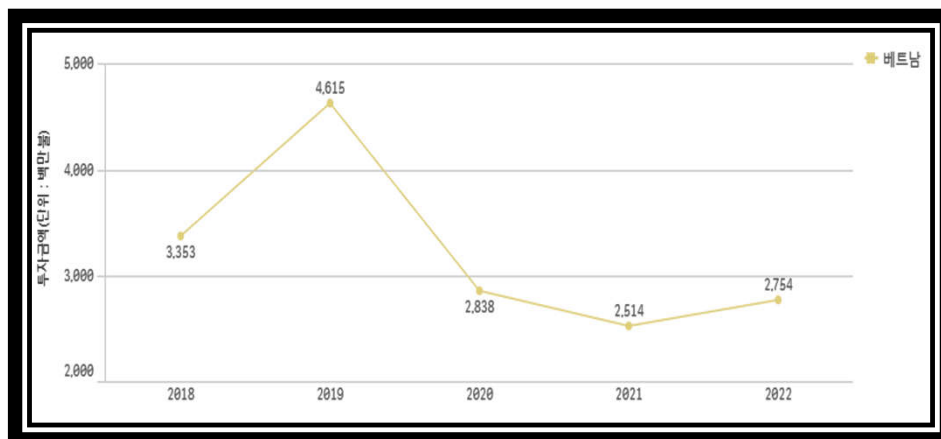
	2018	2019	2020	2021	2022
North America	11,803 (574)	16,983 (693)	18,127 (551)	30,667 (664)	30,220 (723)
Asia	17,842 (2,395)	20,836 (2,564)	18,395 (1,385)	18,612 (1,113)	18,120 (1,265)
Europe	11,954 (328)	14,611 (387)	10,315 (251)	12,339 (279)	15,396 (307)
South America	8,328 (148)	10,803 (244)	8,216 (120)	12,997 (116)	11,329 (155)

Source: KOSIS



Korea FDI to Viet Nam

USD Million



Source: Koreaexim.go.kr



Viet Nam FDI Inflow Overall

	USD Million				
	2018	2019	2020	2021	2022
Amount	35,465	38,951	28,530	31,153	27,718
Project #	10,711	16,227	9,804	6,520	6,709



Viet Nam FDI Inflow by Industry (Valid projects accumulated by Dec 2022)

No.	Sector	# of projects	Total registered capital (Mil. USD)
1	Manufacturing, processing	15,947	260,117.55
2	Real estate sector	1,072	66,267.55
3	Production and distribution of electricity, gas, steam and air conditioning supply	185	38,317.63
4	Accommodation and food service activities	928	12,679.18
5	Construction	1,785	10,899.62
6	Wholesale and retail trade; repair of motor vehicles and motorcycles	6,140	10,260.41
7	Transportation and storage	986	6,170.57
8	Information and communication	2,689	4,919.06
9	Mining and quarrying	108	4,894.57

Source: Vietnam Foreign Investment Agency



Vietnam FDI Inflow by Counterpart (Valid projects accumulated by Dec 2022)

No.	Counterpart	Number of projects	Total registered investment capital (Mil. USD)
1	Republic of Korea	9,534	80,969.64
2	Singapore	3,097	70,846.16
3	Japan	4,978	68,897.17
4	Taiwan (China)	2,905	36,433.74
5	Hong Kong (China)	2,164	29,492.77
6	China	3,567	23,348.82
7	British Virgin Islands	888	22,382.22
8	Netherlands	410	13,713.70
9	Thailand	677	13,098.25
10	Malaysia	702	13,060.40
11	United States of America	1,216	11,415.00

Source: Vietnam Foreign Investment Agency

Major M&A Deals in Viet Nam by Korean Companies

- Samsung Engineering acquired 24% in the DNP Water (water treatment company) for USD 41 mn in July 2022
- Shinhan Financial Group acquires 10% stake Tiki (e commerce company) for USD 88 mn in May 2022
- Thaco (car automaker) took over Emart retail chain and operate it under franchise in Oct. 2021
- SK Group acquire 16.3% of VinCommerce for USD 410 mn in April 2021
- SK Group acquired 9.5% of Masan Group (major food and agricultural company) for USD 470 mn in Sep. 2018
- SK Group acquired 6.15% of Vingroup for USD 1 billion in May 2019
- Hanwha Group acquired 6% in Vingroup fro USD 400 mn in Aug 2018
- KEB Hana Bank acquires 15% in state-owned bank BIDV for USD 875 mn in Nov. 2019



ASEAN Countries FDI Inflows

Country	FDI 2021 (USD Bn)	Population (mn)	GDP per capita (USD)
Singapore	99.1	5.659	91,100
Indonesia	20.1	277.432	5,016
Vietnam	15.7	100.345	4,475
Malaysia	11.6	33.410	13,382
Thailand	11.4	70.183	8,181
Philippines	10.5	112.890	3,905
Cambodia	3.5	16.944	1,924
Lao PDR	1.1	7.582	1,858
Myanmar	1.0	54.205	1,180
Brunei	0.2	0.442	35,103

Source: ASEAN Investment Report 2022/ WIKIPEDIA



Viet Nam vs. Indonesia: The Global Competitiveness Report 2019 (World Economic Forum)

	Viet Nam (67/141)	Indonesia (50/141)
Overall	62	65
Institutions	50	58
Infrastructure	66	68
ICT adoption	<u>69</u>	55
Macro-economic stability	75	90
Health	<u>81</u>	71
Skills	57	64
Product market	54	58
Labour Market	58	58
Financial System	64	64
Market Size	72	82
Business dynamism	57	70
Innovation Capability	37	38



ASEAN FDI by industry (2021)

- Five Industries accounting for more than 80% of total FDI

- (1) Financial and Insurance
- (2) Manufacturing
- (3) Wholesale and retail trade
- (4) Real Estate
- (5) Information and Communication

Source: ASEAN Investment Report 2022



FDI Opportunity Area - EV

- **EV industry (nickel mining, battery production, manufacturing of Evs etc.)**

- CATL (China) USD 5200 mn to Indonesia for battery production (2021)
- Evolmo (US) USD 1060 mn to Thailand for battery plant (2021)
- Foxconn (Taiwan) USD 8000mn to Indonesia for EV segments (2022)
USD 1000-2000 mn to Thailand for EV products (2022)
- Hyundai Motor(Korea) USD 1500 mn to Indonesia for EV production (2021)
- Hyungdai Motor and LG Chem (Korea) USD 1100 mn to Indonesia for EV battery (2021)
- SK Group (Korea) USD 553 mn to Malaysia for electro deposited copper foil for EV batteries (2021)
- Toyota (Japan) USD 2000mn to Indonesia for EV productions (2022)

→**Viet Nam: Carbon Neutrality target (Yes), EV target (Development stage), Investment Incentives for MNEs (general but include EV production), Incentives EV adoption by consumers (not yet), Industrial zones solely for Evs(not yet), National programme and institutional support (not yet)**

Source: ASEAN Investment Report 2022



FDI Opportunity Area- Semiconductor

• Viet Nam

- Hayward Quartz Technology (US), 2021, semiconductor factory
- Qualcomm (US), 2020, R&D facility
- Universal Scientific Industrial (China), 2021, electronic circuit boards for wearable devices
- Half of Samsung 's global smartphone production is from Viet Nam. As of 1 Q, 2022, Samsung had a total investment of USD 19.2 bn
- Intel (US) expanding its testing and assembly operation investing more than USD 1.5 bn
- Other major electronics MNEs include Broadcom (US), Hitachi (Japan), ON Semiconductor (US), Renesas Electronics (Japan), SK Hynix (Korea), STMicroelectronics (Switzerland), Texas Instruments (US), Toshiba (Japan), Canon(Japan) and Panasonic(Japan)

→ Success factor: Support from government, industrial park and the provincial government, offer of policy support and investment incentives, strong labour force, strategic location to enhance cost competitiveness

Source: ASEAN Investment Report 2022



FDI Opportunity Area- Digital economy and Industry 4.0

• Industry 4.0 value chains

- Digital infrastructure,
- industrial automation,
- additive manufacturing,
- Advanced digital technology (industrial Internet of Things,) and smart factory solutions,
- Centers of excellence, and
- R&D activities

• Digital infrastructure: Data Center in Vietnam

- Nippon Telegraph & Telephone (Japan) invested USD 248 mn for data center expansion in Viet Nam

Source: ASEAN Investment Report 2022



Thank You



LEE Myung Jae (MJ)
Partner
Yulchon LLC
mjlee@yulchon.com



Yulchon LLC Parnas Tower, 38F, 521 Teheran-ro, Gangnam-gu, Seoul 06164, Korea Tel: 02-528-5200 Fax: 02-528-5228 E-mail: mail@yulchon.com

Ho Chi Minh City, Vietnam
Unit 601, F6 Diamond Plaza, 34 Le Duze, Ben Ngho Ward, District 1, HCMC, Vietnam
Tel: +84-28-3911-0225 Fax: +84-28-3911-0230 E-mail: hcmc@yulchon.com

Hanoi, Vietnam
27th floor, East Wing, Lotte Center Hanoi, no. 54 Lieu Giai street, Cong Vi ward, Ba Dinh district, Hanoi.
Tel: +84-24-3837-8200 Fax: +84-24-3837-8230 E-mail: hanoi@yulchon.com

Shanghai, China
Room 626, Level 6, Bank of East Asia, 66 Huayuan Shiqiao Road, Pudong, Shanghai 200120, PRC
Tel: +86-21-6179-8834 E-mail: shanghai@yulchon.com

Yangon, Myanmar
#6-47, Level 4, Unilever Training Office Building No.84, Pan Hsing Street, Sanchaung Township, Yangon, Myanmar.
Tel: +95-9-7337-088 Fax: +95-9-7337-088 E-mail: yangon@yulchon.com

Moscow, Russia
12th Fl. White Gardens Business Center, 7 Ulitsa Leshaya, Moscow, Russian Federation, 125047
Tel: +7-495-510-5200 Fax: +7-495-510-5228 E-mail: moscow@yulchon.com


Jakarta, Indonesia (Associated firm)
The Energy, 32nd Floor, SCBD Lot 11A, Jalan Jenderal Sudirman, Kav. 52-53, Jakarta 12190, Indonesia
Tel: +62-678-8994-7950 Fax: +62-21-2978-3800 Jakarta@yulchon.com

M&A IN VIETNAM: UNDERSTANDING THE LEGAL FRAMEWORK AND DISPUTE SETTLEMENT

Doan Nhat Minh

Senior Associate
VILAF



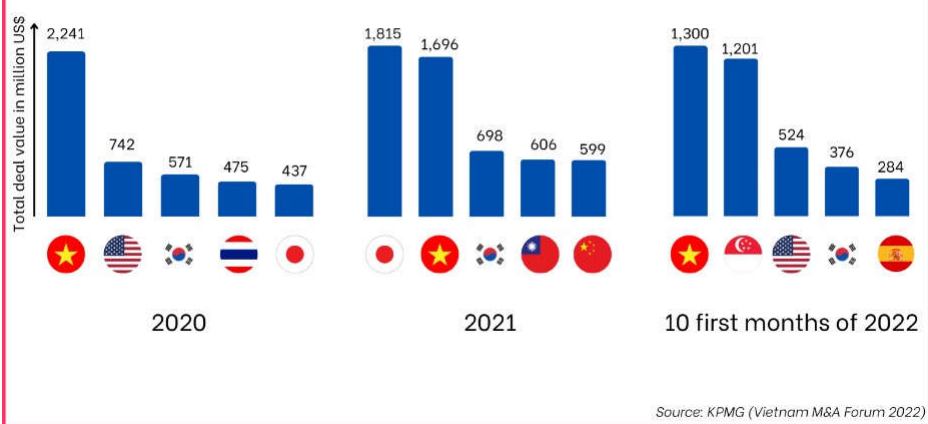
- 
- 1. Recent status of M&A in Vietnam**
 - 2. Legal framework for M&A – A brief look**
 - 3. Potential risks in M&A transactions**
 - 4. Common disputes in M&A transactions**
 - 5. Dispute resolution mechanism**

- First 10 months of 2022: The total value of M&A deals reached **USD 5.7 billion**
- Republic of Korea was ranked 3rd among the biggest foreign M&A players (USD 376 million)

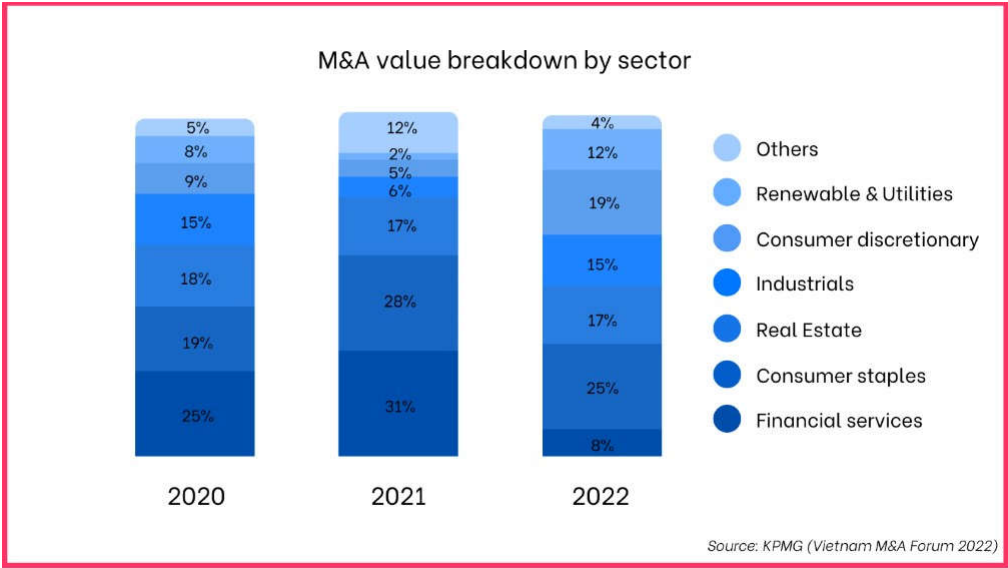
(Data from KPMG Vietnam)

3


Top 5 investors of the Vietnamese M&A Market



4




- M&A is a complicated process → Involving several legal issues
- Legal documents that govern M&A transactions: 2015 Civil Code, 2020 Law on Enterprises, 2020 Law on Investment, 2018 Law on Competition, 2013 Law on Land, 2019 Labour Code, etc.



- **2015 Civil Code:** Basic foundation for M&A

- Article 88 on consolidation of legal entities
- Article 89 on merger of legal entities


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- **2020 Law on Enterprises:** One of the most important legal documents for M&A, especially for preparing Share Purchase Agreement (SPA)/Shareholders' Agreement (SHA)

- Forms of company restructuring
- Transfer of capital contribution/shares
- Enterprise registration
- Operation of companies

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- 
- **2020 Law on Investment:** Requirements/procedures for investment (especially foreign investment)
 - Additional forms of M&A: Project transfer/asset transfer

- 
- **Forms of company restructuring/M&A (1)**
 - Demerger (Articles 198 and 199 of the 2020 Law on Enterprises)
 - Merger (Article 200 of the 2020 Law on Enterprises)
 - Consolidation (Article 201 of the 2020 Law on Enterprises)



- **Forms of company restructuring/M&A (2)**

- Share transfer (Articles 24 and 25 of the 2020 Law on Investment, Articles 52, 76, 77, 127 of the 2020 Law on Enterprises)
- Project transfer/Asset transfer (Article 46 of the 2020 Law on Investment, and other relevant legislations: 2013 Law on Land, 2014 Law on Real Estate Business, etc.)



- **2018 Law on Competition:** Economic concentration/Merger filing

- M&A transactions may not be allowed if they cause or are able to cause **substantial anti-competitive effects** on **the Vietnamese markets**

→ Effects of an M&A transaction shall be assessed under the competition laws



- **Forms of economic concentration** (Article 29 of the 2018 Law on Competition)

- Merger
- Consolidation
- Acquisition: Acquiring the whole or part of properties/shares of another enterprise sufficient to **control** or **dominate** the acquired enterprise or a part of the acquired enterprise's business
- Joint venture: A “fresh” company

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- **Merger filing: General requirements**

- **Parties participating in an economic concentration** can be required to inform the National Council of Competition on their intended transaction
- In practice: Buyers, sellers and target companies

14



- **Merger filing: Notification threshold (1)**

- Total assets of the enterprises participating in the economic concentration on the Vietnamese market (Article 13.1(a) of Decree 35/2020/ND-CP – extending to **assets of affiliates: VND 3,000 billion ~ USD 127 million**)
- Total turnover of enterprises participating in the economic concentration on the Vietnamese market (Article 13.1(b) of Decree 35/2020/ND-CP – extending to **assets of affiliates: VND 3,000 billion ~ USD 127 million**)


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- **Merger filing: Notification threshold (2)**

- The transaction value of the economic concentration (Article 13.1(c) of Decree 35/2020/ND-CP: **VND 1,000 billion ~ USD 42 million**)
- **Combined market share** of enterprises participating in the economic concentration on **the relevant market** (Article 13.1(d) of Decree 35/2020/ND-CP: **20%**)

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- 
- **2019 Labour Code:** Obligations regarding employees after M&A
 - **Other legislations on specific matters:** Land, real estate business, construction, environment, retail, renewable energy, etc.

- 
- Insufficient public information of enterprises
 - Financial/legal due diligence not identify all of potential risks
 - Transaction documents:
 - Not fully reflect commercial – financial – legal aspects of the transaction
 - Not properly deal with identified risks
 - Not cover sufficient representations and warranties



- Lack of clear and detailed provisions/guidance for M&A
- Uncertainty of validity of common M&A concepts/structures under the Vietnamese laws (indemnification, drag-along/tag-along rights, proxy, etc.)



- Failure to complete CPs
- Breach of representations and warranties
- Breach of payment obligation (purchase price, break-fee, etc.)
- Shareholders' disputes



- **Dispute resolution mechanism:**

- Negotiation
 - Mediation
 - Court
 - Arbitration (domestic/international arbitration)
- Mediation and arbitration are getting more and more popular in Vietnam
 - But not all disputes can be settled by arbitration, or some may be limited to domestic arbitration

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- **Exclusive jurisdiction of the Vietnamese courts**

- Article 470.1 of the 2015 Civil Procedure Code: Disputes relating to rights over properties being real estate in Vietnam
- What is “relating to”?
- What are “rights over properties being real estate”?

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- **Exclusive jurisdiction of the Vietnamese courts – Case study (1)**

- Company P (“**Target Company**”): 100% owned by Ms. Oh (“**Seller**”)
- Seller and Buyer signed a Capital Transfer Agreement in 2014
- Buyer breached its payment obligation
- Seller commenced a lawsuit against Buyer at the Seoul District Court (as agreed by the parties in the Capital Transfer Agreement)
- Seller then obtained a favourable judgment (“**Korean judgment**”)



- **Exclusive jurisdiction of the Vietnamese courts – Case study (2)**

- Seller submitted an application for the recognition and enforcement of the Korean Judgment in Vietnam
- However, such application was firstly rejected by a provincial-level court (in 2019), then later by the Superior People’s Court in Ho Chi Minh City (in 2020)




- **Exclusive jurisdiction of the Vietnamese courts – Case study (3)**

- The Court opined that the opinion of the Superior People’s Procuracy in Ho Chi Minh City is reasonable, and therefore the Seller’s application was groundless.
- Opinion of the Superior People’s Procuracy in Ho Chi Minh City: “This is a transfer agreement of **100% capital contribution; including capital, real estate properties**, movable properties, and other relevant rights and obligations. According to Article 470 of the 2015 Civil Procedure Code, dispute between two parties relating to real estate in Vietnam **shall fall within the exclusive jurisdiction of the Vietnamese courts**, and it is incorrect for a Korean court to resolve.”

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 VIETNAM ADR
WEEK 2023



- **Limited options for domestic investors and certain foreign-invested enterprises:**

- Article 23.1 of the 2020 Law on Investment: “Foreign-controlled” enterprises – being treated similarly as a foreign investor
- Dispute in which there is at least a foreign investor/”foreign-controlled” enterprises can be settled by Vietnamese courts – domestic arbitration – international arbitration – ad-hoc arbitration (Article 14.3 of the 2020 Law on Investment)
- Dispute between domestic investors/other foreign-invested enterprises can only be settled by Vietnamese courts or Vietnamese arbitration (Article 14.2 of the 2020 Law on Investment).

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 VIETNAM ADR
WEEK 2023



**Thank you for
your attention!**



Doan Nhat Minh

*Senior Associate – VILAF
minh.doan@vilaf.com.vn*

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M&A TRENDS DURING ECONOMIC VICISSITUDES

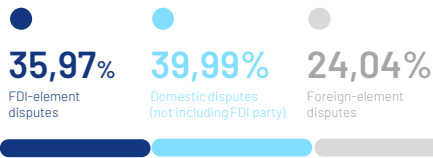
Observation & viewpoint
from dispute resolution at VIAC

HANG, VU (Ms.)
Deputy Director, VIAC Secretariat



Our Statistics

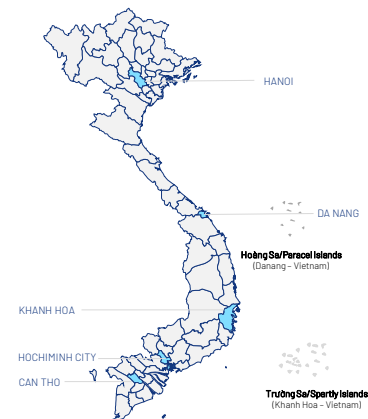
2,513 CASES
(1993 – 2022)



56,1%
Rate of lawyer's participation
as Advocate or Authorized
representative



TOTAL DISPUTE VALUE (2011 – 2022)
4,855 BILLION VND
~1,9 BILLION VND



Dispute resolution activities at VMC (2018 – 2022)



36
Number of disputes received by VMC



Total value in dispute
-1.500 BILLION (VND)
~ 68 MILLION (USD)



Types of dispute
Construction
Sales of Goods
Service
Intellectual Property
Real Estate

47%

CASES

With mediators appointed by Parties (With the assistance of VMC secretariat)

44%

CASES

With participation of a lawyer

91%

CASES

Successfully concluded by a MSA and all voluntarily implemented

44%

CASES

With international elements or participation of international mediators

3

Observations – M&A and Corporate disputes

VIAC's statistic from 2015 to 2022

- A total of 46 cases.
- Most cases have foreign elements.
- Dispute value usually below USD 15 Mil; some of cases go a bit over USD 86 Mil
- 60% cases have the engagement of lawyer.
- Law governing contract is usually Vietnamese Law.
- The language of the arbitration is usually English.

ABA's Survey on Common Dispute in International M&A Deals

- Breach of representations and warranties.
- Earn out.
- Price mechanism/adjustment.
- Lack of performance by one of the parties.
- Conditions precedent.
- Indemnities.
- Others (Employment issues and shareholders' agreements).

Dispute in Vietnam and VIAC in accordance with ABA's list

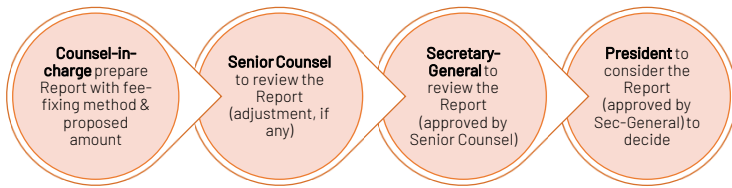
- Breach of representations and warranties.
- Price mechanism/adjustment.
- Lack of performance by one of the parties.
- Indemnities.
- Shareholders' dispute.

4

Observations (cont.)

Monetary claims and non-monetary claims

- o Request for nullifying of Resolution of General Meeting of Shareholders.
- o Request for declaration of right for Put option
- o Request for an order for access to the minutes of meetings, financial statements, resolutions and decisions of the Board of Directors, GMS, etc.
- o Declare the unilateral termination of the contract is illegitimate [without asking for legal consequences]



FIXING ARBITRATION COSTS FOR NON-MONETARY REQUESTS

KEY CONSIDERATIONS



Nature of disputes



Estimated time for dispute settlement

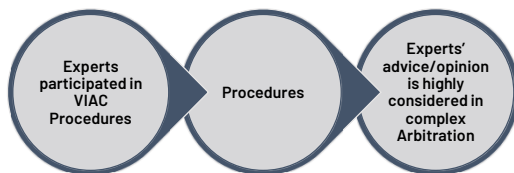


Numbers of arbitrators

5

Observations (cont.)

Participation Of Experts in complex arbitration at VIAC



- Legal Expert
- Expert of Damages/Quantum
- Delay Expert
- Financial expert
- Expert of quality

- Expert report
- Joint expert report
- Hot-tubbing

- The complex & technical/financial/legal issues in the case
- Credibility and weigh of the evidence present to Tribunal

MULTIPARTY ARBITRATION

Multiple parties to the same contract <SHA, SPA & other corporate disputes>

Consolidation cases of different contracts <Deal Agent; Investor and Shareholder/Company>

PROCEDURAL ISSUES

Multi-contracts arbitration (Confidentiality and Right to select an Arbitrator)

Incompatible dispute resolution clauses in multiple contracts/irrelevant disputing contracts

Consolidation of disputes after the Arbitral Tribunal is constituted

Arbitral Tribunals may include Vietnamese and foreign arbitrators. These arbitrators can be within or outside arbitration institution's List of arbitrator

International Arbitral Tribunal (Diverse nationalities)



INTERNATIONAL ARBITRATION PROCEDURE AT VIAC

Substantive law could be a set of national law or international principles of international law or foreign laws. (Ex: Vietnamese law, Malaysian law, UK case law, CISG,...)

Law governing the merit & procedure of the dispute



- Venue of Hearing can be outside Vietnamese territory
- Language of arbitration: English, Mandarin Chinese, Korean,...
- Witness examination, witness cross-checking, expert's report...
- Virtual/Remote or in-person hearing w. live transcription, interpretation

International procedural steps

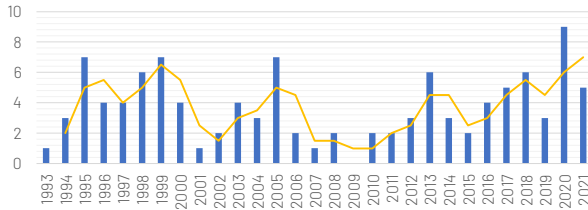


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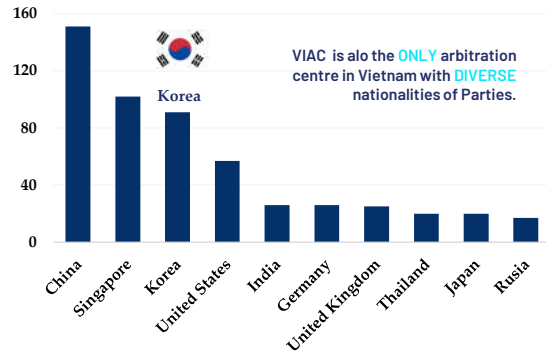
Observations (cont.)

Korea-focused stats at VIAC

Statistic of disputes featuring Korean parties (1993 – 2021)



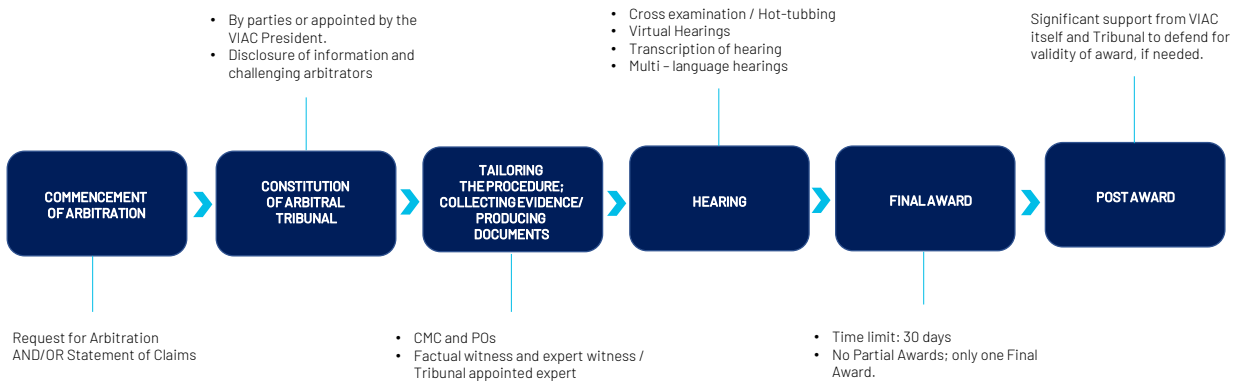
Total value	~2,600 bil VND ~99 mil USD
Highest value of the dispute	~1689 bil VND ~72 mil USD
Average value	~24,89 bil VND ~1,08 mil USD



VIAC is also the **ONLY** arbitration centre in Vietnam with **DIVERSE** nationalities of Parties.

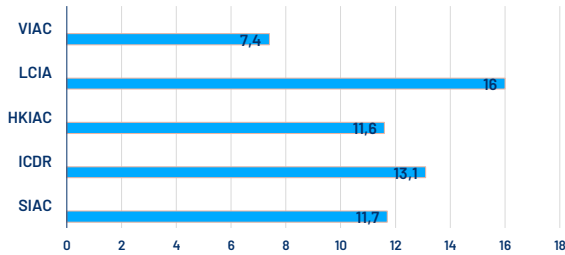
Top 10 users at VIAC by jurisdiction

Typical Arbitration Proceedings at VIAC



Arbitration duration & cost at some arbitration institutions

Median duration of arbitration for all tribunals (months)(*)



* International Centre for Dispute Resolution® (ICDR®), Arbitration Report on Time and Cost Considering the Impact of Settling International Arbitrations



Expedited procedure could rush-up the duration

COMPARISON BOARD ON ARBITRATION FEE OF SOME INTERNATIONAL ARBITRATION INSTITUTIONS

	SIAC	VIAC	ICC
Minimum value in dispute	~ USD 35,306	~ USD 4,059	N/A
Minimum fee with the minimum value in dispute	~ USD 11,943	~ USD 670	~ USD 5,000 non-refundable filing fee
Arbitration fee with the value in dispute of USD 60,000	~ USD 20,017 <small>(not including hearing room rental costs and costs related to the Appointment of Arbitrator/Change of Arbitrator; Travel and accommodation expenses of Arbitrator)</small>	~ USD 4,337 <small>(Including hearing room rental costs and costs related to the Appointment of Arbitrator/Change of Arbitrator; Not including Travel and accommodation expenses of Arbitrator)</small>	~ USD 25,601 <small>(not including hearing room rental costs and costs related to the Appointment of Arbitrator/Change of Arbitrator; Travel and accommodation expenses of Arbitrator)</small>

Notes for Arbitration users

WHAT TO LOOK FOR IN AN ARBITRAL INSTITUTION?

- Permanency
- Modern rules of arbitration
- Specialized & Professional staff
- Reasonable costs and fees

Redfern & Hunters on International Arbitration (8th edition - 2015)

CHOICE OF LAW

Substantive law

Law of the seat - Procedural Law

Determine the national procedural law governing the arbitration procedure; and the competent national Court to supervise the arbitration proceedings

Governing law of Arbitration agreement

(supervise the Arbitral Awards & Assist some arbitration procedures)

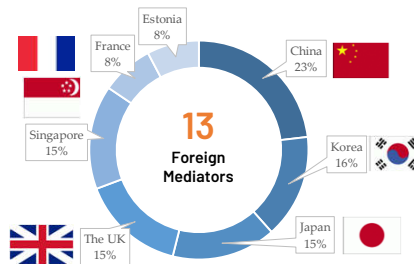
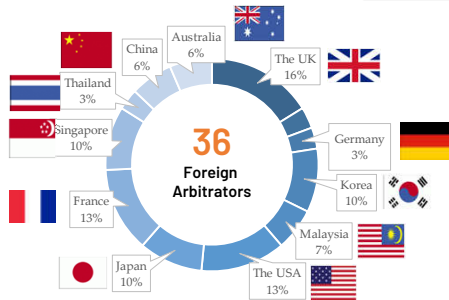
SELECT AN ARBITRATOR

"ARBITRATION IS AS GOOD AS ARBITRATOR"

- Industry Knowledge
- Language Ability
- Reputation/Credibility for Independence and Impartiality
- Experience in Arbitration



198 Arbitrators
162 Vietnamese Arbitrators
36 Foreign Arbitrators



58 Mediators
45 Vietnamese Mediators
13 Foreign Mediators

Observations – Disputes in Real estate market

- ❖ Disputes might arise from construction phase or distribution phase.
- ❖ Restructuring real estate projects is considered one of the solutions (Joint venture contracts or M&A are typical tools of restructure)

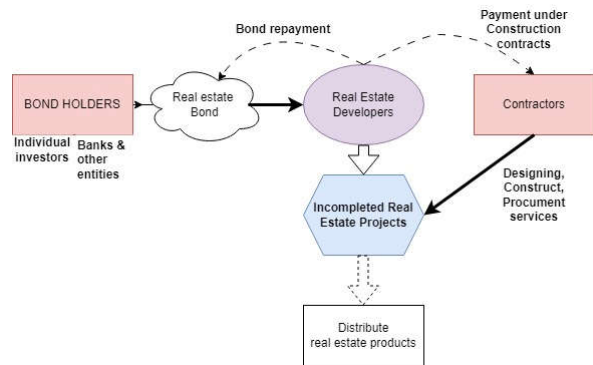


Illustration of Current situation of Real Estate market in terms of potential legal risks

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THANK YOU
ARBITRATE IN VIETNAM,
CHOOSE VIAC

VAW
2023

12

International Arbitration Market Trend and Issues

– New World, No Map

STEVE KIM, SECRETARY-GENERAL
KCAB INTERNATIONAL



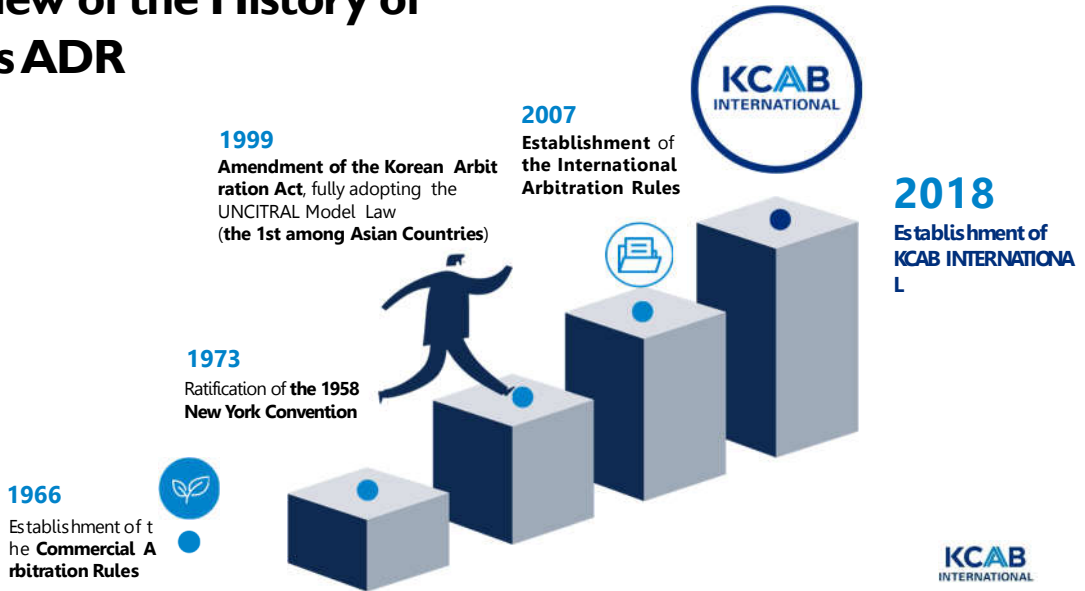
Steve Kim- Secretary General (KCAB INTL)



Steve Kim

- Attorney-at-Law (US)
- Director of ICDR of the American Arbitration Association (NY)
- Senior Corporate Counsel- Samsung
- Country Manager- CPA Global (Patent Management and Legal Services)
- Lead Consultant Attorney and Business Development for Korea (CMS Cameron McKenna Nabarro Olswang LLP)

Overview of the History of Korea's ADR

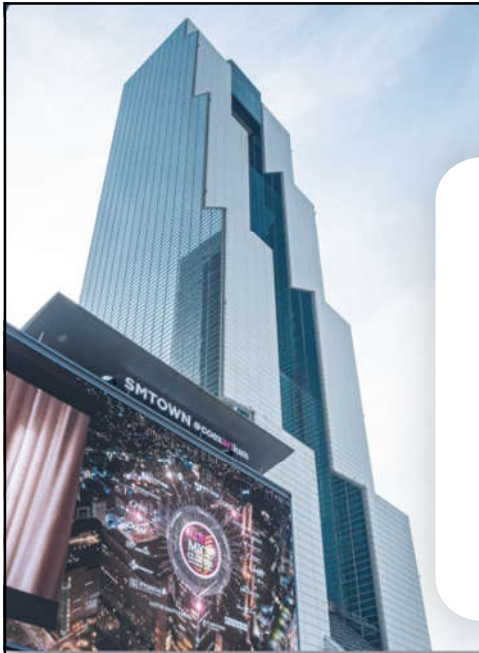


International Panel



KCAB INTERNATIONAL now has **625 arbitrators** on its International Panel from various countries including USA, UK, China, Germany, Singapore, Australia, Japan, Canada, Austria and France.



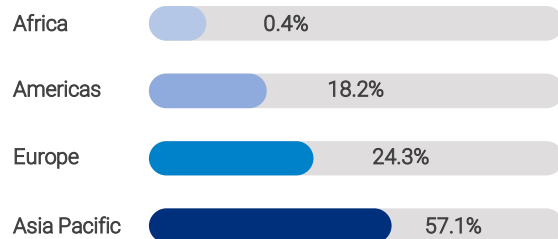


Top 10 Users

Rank	Country
1	USA
2	China
3	Japan
4	Canada
5	Vietnam
6	Hong Kong
7	United Kingdom
8	Poland
9	Singapore
10	Thailand



Nationality of Arbitrators

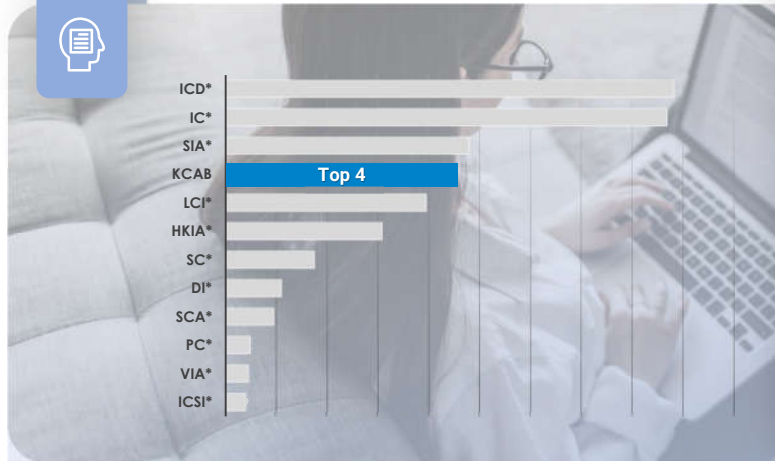


KCAB INTERNATIONAL's dedicated panel of international arbitrators is based in Asia Pacific, Europe, Americas and Africa who has extensive experience in the legal sector with diverse expertise and industrial backgrounds.





Reputation & Statistics



Sourced by: Baker McKenzie "Arbitration Statistics 2019- How did arbitration institutions fare in 2019?"

KCAB INTERNATIONAL

Listed as "**Institutions Worth a closer look – Asia Pacific**"

for **4 consecutive years**
Global Arbitration Review: Guide to Regional Arbitration (2017-2020)

Ranked **Top 4** among global arbitral institutions for a caseload recorded in 2019
Baker McKenzie Global News: Arbitration Statistics 2019- How did arbitration institutions fare in 2019?



Overseas Offices



Los Angeles, USA



Shanghai, China



Hanoi, Vietnam





Seoul IDRC

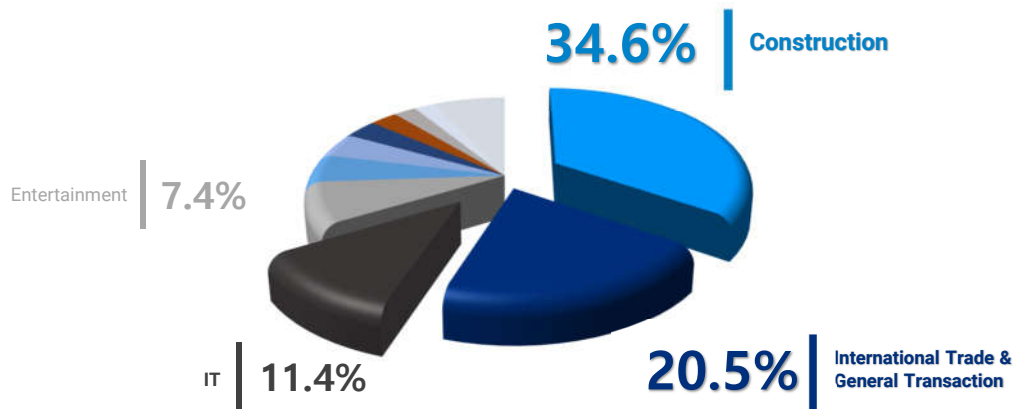
(Seoul International Dispute Resolution Center)

Seoul IDRC is a state-of-the-art, multi-purpose hearing center located in Northeast Asia. We offer convenient and highly advanced facilities for arbitration hearings, business meetings and conferences.

- State-of-the-art Hearing Facilities & Services
- Arbitration Hearing
- Mediation Hearing
- Conference & Meeting

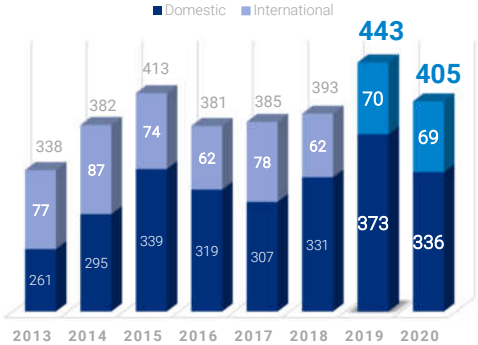


Arbitration Cases by Industry

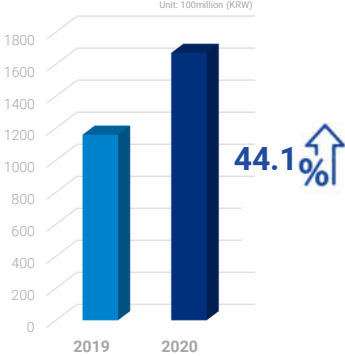


Case Statistics

Total Cases (2013 - 2020)



Amount of Disputes (Compared to 2019)



Global ADR Institutions



Increased Usage of Arbitration among Korean Users

KCAB Arbitration Statistics					
	2017	2018	2019	2020	2021
DOMESTIC	307	331	373	336	450
INTERNATIONAL	78	62	70	69	50
TOTAL	385	393	443	405	500

•South Korean companies referring to arbitration in domestic disputes has been on the rise since 2017 despite a slight setback in 2020 during COVID.



Recent Business Trends in Korea

1. Rapid Rise of Start-ups

- Top 10 companies were large conglomerates and their subsidiaries
- Coupang and Naver (once small companies) are now top 10
- Time to change old perceptions on Korean domestic market



Business Trends in Vietnam

1. Continued Interest in Renewable Energy in Vietnam

- Renewable energy industry in Vietnam has achieved unprecedented growth in recent years, particularly in solar and wind energy.
- Vietnam ranked 3rd worldwide in terms of solar capacity added, with 11.6 GW, behind only the United States and China.

2. Logistics and Manufacturing Industry of Vietnam Bolstered

- Despite supply chain issues, Vietnam's logistics and manufacturing industry remains in a promising position.
- Vietnam's advantageous geographic location, large population, and potential additions to the labor market make it an appealing option for investors.

3. The Emergence of E-commerce and Fintech in Vietnam

- E-commerce and fintech are complementary to the growth of other industries in Vietnam.
- These industries are still developing, and are expected to continue influencing emerging business trends in 2022



Vietnam and South Korea: Economic Partnership and Investment Trends

Vietnam rises as Seoul's new economic partner:

- Bilateral trade between Vietnam and South Korea rose to over \$86 billion in 2021, compared to only \$500 million three decades ago.
- It is estimate that two-way trade will reach \$150 billion by 2030, and Seoul's investments in Vietnam will reach \$100 billion.
- Recent Vietnamese figures indicate Seoul's investments in Vietnam totaled \$80 billion between 1988 and 2022 in over 9,000 projects.
- Many industrial giants, including Pohang Iron and Steel, Hyundai Motors and Shipbuilding, and LG Electronics, are investing heavily in Vietnam. Samsung plans to invest \$2 billion this year for a new chip production site, bringing its Vietnam investments to a total of \$17.6 billion.
- However, it was indicated that tightened work visa rules and fire safety standards could be the factors deterring Korean firms from expanding investments in Vietnam.



Not on the map: Unforeseen Challenges

- Pandemic, Geopolitical conflict, Supply chain issues, etc.
- No one predicted these factors; this caused new business paradigm, shift in the economy and changed people's psychology
- Instability and uncertainty seems to continue in the market

M&A Deals in South Korea

M&A in South Korea's technology, media, and telecom sector

- 81 M&A deals in South Korea's Technology, Media, and Telecom sector in the past 12 months
- Total deal value of \$9,656.1 million
- Largest deal was between EMART Inc and eBay Korea Co., Ltd. for \$3,061.6 million
- Top 5 deals accounted for 65.62% of total deals by value
- June 2021 had the highest total deal value at \$4,723.5 million
- July 2021 had the highest deal volume with 10 deals and an average value of \$31.5 million



M&A Deals in South Korea: Booming in Pharma-Bio Space

Venture-Backed Giants Pursue Deals for Technological Capabilities

- M&A activity is booming in the pharma-bio space, with both large and mid-sized companies actively engaged in M&A.
- Yuhan plans to acquire biotech company Progen for 30 billion won and use their multi-target antibody-based platform technology to discover new drug candidates.
- Celltrion aims to pursue M&A worth up to \$5 trillion over the year, targeting domestic and foreign biotech companies with new drug R&D capabilities.
- LG Chem acquired AVEO Pharmaceuticals for about 700 billion won to strengthen its pipeline in the anti-cancer field and is conducting preclinical studies on anti-cancer drug candidates such as cell therapy and immune gateway inhibitors.



Rising M&A Deals: South Korean Investors Eyeing Vietnam's Market

South Korean Companies' Growing Investments in Vietnam

- SK Group is one of the most active investors in Vietnam's mergers and acquisitions (M&A) market.
- SK Innovation has taken over the operator of Block 16-2 in southern Vietnam, situated in Cuu Long Basin, the most promising oilfield in Vietnam.
- SK Investment III, a subsidiary of SK Group, received nearly 25 percent of Imexpharm Corporation's stocks, paving the way for SK Group to tap into Vietnam's fast-growing pharmaceutical and healthcare market.
- Lotte Chemical has acquired Vietnamese high-tech material company Vina Polytech to diversify its overseas business portfolio.
- South Korean companies are not only keen on real estate but also on the manufacturing and heavy industry sectors, and now branching out into consumer sectors.
- M&A by South Korean investors rose sharply in the first six months of the year, with the value of transactions involving South Korean companies reaching \$15.8 billion, up 48.1 percent from a year earlier.



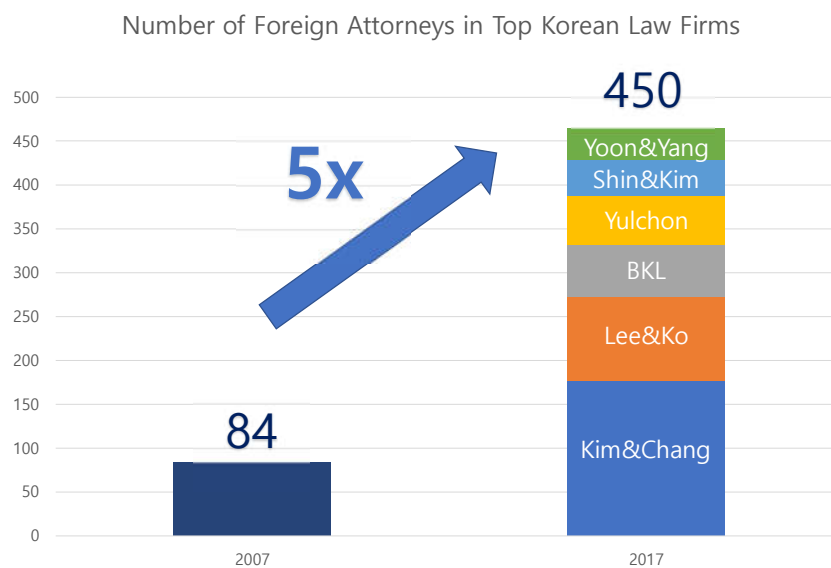
But the real mood in Korea is....

- Companies staying quiet on overseas investment (for now)
- Real estate market (domestic) cooling down
- Consumer staying conservative on spending due to increase in cost of living

So what now?

- Companies are looking at 2nd half of 2023 to be more active
- Companies have large cash reserves- they need invest somewhere
- Arbitration institutions looking at new engines that are driving the global market (blockchain, web 3.0, renewable energy, carbon reduction, etc.)

Growth of Korean foreign legal market (Southeast Asia is following this trend)



Growth of ADR...but the landscape has changed

⟨Heightened Awareness of ADR⟩

- Yes but 2% short (as the saying goes)
- Awareness typically resided within the 1st tier corporate segment
- Arbitration and Mediation both are gaining interest (time to capitalize)

⟨So what is KCAB INTL doing about this?⟩

- Identify secondary and niche market segment (mid/mid large, start ups, etc.)
- Identify current relevant issues that may NOT be arbitration related (to be explained)
- Show benefits of arbitration (not just the typical benefits but using procedural tactics and using the institution to voice your opinions)

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The story continues from the last slide...

⟨How to work with law firms⟩

- Different approach- make it worthwhile for law firms to invest the time/resources to work with us
- Target CEO, CFO, etc. and mid-level managers who either run the companies or have to report to the seniors (report writing is important)

⟨Examples of Non Arbitration (yet arbitration) Marketing⟩

- ESG, platform, AI, blockchain all are popular and may not be immediately in the arbitration space but...
- Clients want to know what questions we are getting (we do not necessarily need to have the answers)
- With the questions alone, the businesses can see the trend, formulate strategy and all of this will eventually lead to disputes at some point (we want to be early in the action)

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INTERNATIONAL

Final Thoughts...

- Points to Remember
 - a. More awareness needed on arbitration (whole new segment is missing from law firm marketing strategy)
 - b. Institutions need to be at the “front -end” of the new business paradigm, not the “back-end” (Don’t wait for disputes to happen, become a center of information)
 - c. Institutions should take a different approach (we love arbitration but we see the same people all the time...honestly, it gets a bit boring)



Thank You!

www.kcabinternational.or.kr
E. international@kcab.or.kr T. +82 2 551 2000



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