



## ***Vietnam and the Singapore Convention on Mediation***

**Mr. Tony Nguyen**

**Date:** 17 June 2020 **Time:** 1:00pm CEST

### Presentation Summary:

Mr. Tony Nguyen (Deputy Director of Vietnam Mediation Centre and co-founder of EPLegal) gave a detailed presentation on the topic ‘Vietnam and the Singapore Convention on Mediation’. Mr. Nguyen started his presentation by sharing that Vietnam has been practicing mediation for many years, but the lack of mediation awareness prevented the practice from being recognized domestically. However, the practice of commercial mediation only started very recently in Vietnam. Despite that, there is a robust institutional framework in place to support the practice – for instance arbitration institutions, independent mediation institutions, and *ad hoc* mediators.

A brief overview of the legislation recognizing and facilitating mediation in Vietnam was explored. Article 317.2 of the [Commercial law \(Law No. 36/2005/QH11\)](#) and Article 14.1 of the [Law on Investment \(Law No. 67/2014/QH13\)](#) recognized mediation as a means of dispute resolution for commercial disputes. The [Code of Civil Procedure \(No. 92/2015/QH13\)](#) provided the framework for the recognition of settlement agreements resulting from mediation.

Mr. Nguyen thought that (2017 Decree) was the most relevant legislation regarding commercial mediation. This is because the 2017 Decree has provided the scope and framework for the resolution of disputes through commercial mediators and mediation institutions. At the same time, the recent Law on Mediation and Dialogue at Courts, 2020 has provided recognition for mediation as a dispute resolution mechanism in civil, commercial

and administrative disputes.<sup>1</sup> It was thought that this would also contribute to the growth of commercial mediation.

Mr. Nguyen then proceeded to set out the differences between the Singapore Convention of Mediation<sup>2</sup> (SCM) and the Vietnamese legal framework. He opined that these were relevant for Vietnam in preparing for the signing and the ratification of the SCM.

- The scope of mediation under the SCM is wider than that under the 2017 Decree. Under the SCM, any mediator can mediate in an international commercial dispute. However, under the 2017 Decree, only commercial mediators registered with the Ministry of Justice, Socialist Republic of Vietnam and/or commercial mediation centers such as the Vietnam Mediation Center, can mediate a commercial dispute.
- The *ratione materiae* under Vietnamese law is more expansive than the SCM. The former included commercial mediators, commercial mediation institutions, foreign commercial mediation institutions based in Vietnam. Under Article 1.2 of the 2017 Decree, consumer disputes would qualify as commercial disputes as having only one commercial party is sufficient to meet the defined requirement. This is different from the SCM where both parties are required to be commercial parties.
- The scope of exclusion under the SCM and the 2017 Decree is in stark contrast. The SCM excludes consumer disputes, family and inheritance disputes, labor disputes, and settlement agreements approved by the court and enforceable as a judgment. The 2017 Decree on the other hand, excludes self-negotiated settlements and disputes that were not mediated by commercial mediators, commercial mediation institutions or foreign commercial mediation institutions based in Vietnam.
- The 2017 Decree does not provide for the enforcement of non-Vietnamese mediated settlement agreements. Accordingly, domestic law would need to be amended in order to implement the SCM.

Mr. Nguyen shared that Vietnam has not signed the SCM as policy makers were hesitant due to the differences between current domestic legal framework and the SCM as mentioned above. However, he was confident that Vietnam would ratify the SCM within the next few

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<sup>1</sup> The Law on Mediation and Dialogue at Courts, 2020 was passed on 16 June 2020 during the ongoing ninth session of the 14<sup>th</sup> National Assembly in Hanoi.

<sup>2</sup> Officially named United Nations Convention on International Settlement Agreements Resulting from Mediation.

years. Some factors which would help expedite the process of Vietnam signing the SCM include:

- Better understanding of the SCM to gain greater awareness about the benefits of ratifying the SCM;
- Conducting research that adopts the cost and benefits analysis on ratifying the SCM in Vietnam;
- Lobbying the Parliament and Government to amend the existing laws to be consistent with the SCM;
- Recognizing hybrid dispute resolution mechanisms such as mediation-arbitration and arbitration-mediation-arbitration.

Mr. Nguyen concluded the presentation by opining that there is a need to develop a consistent mediation practice and mediation counsel practice. He suggested that greater mediation awareness could be cultivated through the incorporation of mediation training and grassroot mediation practices.

#### Q&A Discussion

Some questions addressed by Mr. Nguyen in the interactive question and answer discussion:

- How do court-annexed mediations function in Vietnam?
- What are the benefits of mediator training in Vietnam?
- How would certification help mediators in Vietnam?
- What are the challenges in aligning the laws of Vietnam to the SCM?
- Are law students exposed to mediation as part of their legal studies curriculum?
- Would mediation be adopted in commercial areas other than construction?
- How should mediation be promoted among businesses?

We invite you to listen to Mr. Nguyen's answers from the video record of the session [here](#), as well as to catch up on his response to other questions not listed above.

Links to requested resources that came up during the session are provided below:

- Formal accreditation by a standards body for individual mediators:<sup>3</sup>
  - [International Mediation Institute \(IMI\) Certified Mediator](#)
  - [Singapore International Mediation Institute \(SIMI\) – Credentialing Scheme](#)
- [United Nations Convention on International Settlement Agreements Resulting from Mediation](#) also known as the ‘Singapore Convention on Mediation’
- [Law on Investment \(Law No. 67/2014/QH13\)](#)
- [Code of Civil Procedure \(No. 92/2015/QH13\)](#)
- [Decree No. 22/2017/ND-CP on Commercial Mediation](#)
- [Commercial Law \(No. 36/2005/QH11\)](#)

The team at SIMI and IMI would like to express our gratitude to Mr. Nguyen for sharing his time to be a speaker at the Singapore Convention Seminar Series and to participants for joining us live for the session. Do join us for our next seminar by Ana Sambold on ‘*The Singapore Convention on Mediation: a US Perspective*’!

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#### About the speaker



Tony Nguyen is the co-founder of EPLegal (Vietnam) and has spent nineteen years practicing in the Projects and Energy industry. He has held managerial and legal positions in leading companies for oil & gas operators and contractors in Vietnam. He is the first mediator in Vietnam, and the first Vietnamese member to be certified by the British Arbitration Institute (CIArB).

Tony is a dispute resolution counselor acting in litigation and ADR practices in Vietnam, Singapore, Hong Kong and often represents clients in disputes in Vietnam International Arbitration Center (VIAC) and Singapore International Arbitration Center (SIAC).

In 2017, Tony was appointed by VIAC to be a member of the Scientific Advisory Council and actively participated in training, research and drafting of VIAC rules. In 2019, he became VIAC Arbitrator and was also elected as the Chair of Committee of CIArb Branch in

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<sup>3</sup> There is cross recognition offered between IMI’s Certified Mediators and SIMI’s Certified Mediators. Individual mediators accredited on other levels by IMI or SIMI do not qualify for cross recognition by virtue of having not met the minimum required experience.

Vietnam. In January 2020, he was appointed as the Deputy Director of Vietnam Mediation Center (VMC).

As one of the top-tiered Project & Energy lawyers in Vietnam, Tony's expertise contribute significantly to the mediation and arbitration industry in Vietnam.