



REQUEST FOR INFORMATION

RFI number: 72044021RFI00002

Release date: August 27, 2021

Response due date: September 27, 2021 at 9:00 am Hanoi local time

Description

The United States Agency for International Development's Mission to Vietnam (USAID/Vietnam) is in the process of gathering information to support anticipated activity design for the Commercial and Investment Alternative Dispute Resolution Ecosystem in Vietnam.

The purpose of this Request for Information (RFI) is to conduct market research and to obtain input from interested parties.

This is a Request for Information Only

This RFI is issued solely for information and planning purposes – it is not a Request for Proposals (RFP) or Notice of Funding Opportunity (NOFO) and is not to be construed as a commitment by the U.S. Government to issue any solicitation or notice of funding opportunity, or ultimately award a contract or assistance agreement on the basis of this RFI, or to pay for any information voluntarily submitted as a result of this request.

Furthermore, USAID is not at this time seeking proposals/applications and will not accept unsolicited proposals/applications. Responses to this RFI are voluntary. Not responding to this RFI does not preclude participation in any future RFP or NOFO, if any is issued.

If an RFP or NOFO is issued, it will be announced on the Federal Business Opportunities website <https://sam.gov> or <https://www.grants.gov>, as applicable, at a later date.

Background

Alternative Dispute Resolution (ADR) in commercial and investment activities is an exercise through which contract related disputes are resolved by facilitated negotiation, conciliation/mediation, and arbitration. These mechanisms often replace formal court proceedings and may help reduce the pressure on the court system. In Vietnam, ADR formally consists of commercial arbitration and mediation.

In recent years, especially after the issuance of the 2010 Law on Commercial Arbitration, ADR in Vietnam has gained momentum and is becoming an increasingly attractive method of

resolving disputes for both domestic and foreign investors. When faced with lengthy civil litigation procedures and a court system with limited bandwidth in economic hubs like Hanoi and Ho Chi Minh City, ADR proceedings have advantages over traditional methods.

Statistics show that domestic companies are relying more on arbitration to resolve their disputes. The number of domestic enterprises using alternative dispute resolution at the Vietnam International Arbitration Center (VIAC), the largest arbitration center in Vietnam, increased from 38 cases in 2014 (accounting for 31% of the total cases) to 155 cases in 2020 (accounting for 70% of the total cases). Though ADR's popularity has been improving in commercial and investment matters, especially with foreign investors, it is still not the preferred dispute resolution method due to the lack of awareness and trust. For large disputes, foreign investors have indicated a preference for international arbitration centers, such as the Singapore International Arbitration Center (SIAC).

Vietnam's impressive expansion of foreign trade and acceptance of foreign direct investment over the past 30 years has transformed the country into a highly globally integrated and reliant economies in the world¹. The country has signed 15 Free Trade Agreements (FTAs) notably the Comprehensive and Progressive Transpacific Partnership (CPTPP) and the Vietnam - EU Free Trade Agreement (EVFTA). The new generation of FTAs requires a high standard for ADR to resolve commercial and investment disputes. An effective ADR system will contribute to resolving disputes, reducing the burden on the court system, and bringing greater confidence to investors.

Challenges

The increasing volume of Vietnam's economic activities and improved legislation on ADR has resulted in growth for ADR over the last few years. But major operational pitfalls remain, which prevent greater development of local arbitration and mediation services.

Perceived challenges include a lack of awareness of and trust in the local ADR system, especially domestic businesses. Many Vietnamese enterprises may be hesitant to use ADR as: (1) firms are unaware of the existence of this type of dispute resolution mechanism; and (2) firms have lower confidence in the enforceability of arbitral awards, as judges can review and set aside arbitral awards on grounds that do not align with international ADR practices. Additionally, many judges are not familiar with ADR procedures leading to the weak enforcement of arbitral awards, especially foreign arbitration ones. Although the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, (commonly known as the "New York Convention") came into force in Vietnam on 11 December 1995, there appears to remain significant uncertainty as to the extent to which foreign arbitration awards can be enforced in Vietnam.²

In addition, limited capacity of many Vietnamese arbitrators, mediators, judges and poor operation of ADR centers, including facilities, appear to hamper more widespread adoption of

¹ <https://vir.com.vn/singapore-institute-intl-trade-fdi-turn-vietnam-into-one-of-the-most-open-economies-79046.html>;
<https://www.weforum.org/agenda/2018/10/vietnam-is-the-most-globalized-populous-country-in-modern-history/>

² The percentage of applications for enforcement of foreign arbitral awards which have been rejected by the Vietnamese courts is notably high. For example, according to the Ministry of Justice, Vietnam's Courts rejected 46% of applications for enforcement of foreign arbitral awards (24 out of 52) from 2005 to 2014. The number is declining but still considerably high, 36 % of the foreign arbitration awards were rejected from 2012 to 2019. Even among the recognized arbitration awards, the percentage of awards which have been actually enforced is still unknown.

ADR in Vietnam. It is USAID's understanding that many arbitration centers in Vietnam do not have sufficient qualified arbitrators, especially in specialized areas such as energy, engineering, finance, intellectual property rights, etc. Only a few arbitrators have a common law background (while a large number of international transactions are governed by either English or Singapore law), and many ADR professionals are not fluent in English. There may also be concerns that some arbitrators are vulnerable to political influence due to their past or present positions within, or related to, the government. Lastly, many arbitration centers lack facilities and professional management teams to facilitate complex arbitration cases. Vietnam currently has 35 arbitration and mediation centers but only VIAC appears to operate effectively nationwide.

Further, Vietnam's legislation in this area has yet to meet international standards. Vietnam's Law on Commercial Arbitration has been in force since 2010 and many flaws and challenges have come to the fore after 11 years of implementation. In terms of mediation, Vietnam may also benefit from upgrading Decree 22/2017/ND-CP on commercial mediation, as the current Decree is a sub-law document, and is unable to resolve legislation gaps among specialized laws.

Information Requested

USAID/Vietnam has developed this RFI to better understand:

- 1) whether the Vietnamese Alternative Dispute Resolution ecosystem, especially in the commercial and investment area, needs strengthening and where efforts are best focused; and
- 2) which non-governmental organizations, especially local based organizations, including the private sector, are active in this field and may be interested in cooperating with USAID.

Respondents are free to submit answers to any or all of the following questions:

1. Briefly describe your organization and experience enhancing the capacity of Vietnam's ADR ecosystem? Please specify if your organization has a local presence in Vietnam.
2. Based on your understanding of the international and/or local ADR system, what are the key barriers for the further development of ADR in commercial and investment activities in Vietnam ?
3. What obstacles does your organization see in working with local ADR stakeholders like related government organizations, arbitrators, mediators, judges etc. in these matters?
4. What models of activity implementation or key investment would you propose we consider that could result in a sustainable development for commercial ADRs in Vietnam which could help enhance the ADR ecosystem and economic competitiveness?
5. Is your organization interested in partnering with USAID? Are there other organizations that are active and/or would be interested in this partnership (and if so, who are they*)? What could USAID's partnership engagement provide to organizations already active in this space?
6. What innovative and sustainable solutions exist to help address the challenges to ADR in commercial and investment activities?

7. What results should USAID target with potential technical assistance in commercial ADR and what measurements might be best to assess progress?
8. Is there anything else you would like to add related to commercial ADR that will ensure the success of potential engagement in the ADR field?
9. What activities could make firms more aware of the existence of this type of dispute resolution mechanism and what solutions could make them confident in the enforceability of arbitral awards?
10. What are the solutions for arbitration centers lacking facilities and professional management teams to facilitate complex arbitration cases and move to operation nationwide?
11. What activity implementation would make judges more familiar with ADR procedures leading to the strong enforcement of arbitral awards, especially foreign arbitration ones?

*Please share this RFI with any relevant parties.

Responses Submission Guideline

Interested parties are requested to respond to this RFI in Microsoft Word compatible formats and submitted via email to Ms. Van Trinh, Acquisition and Assistance Specialist, at vantrinh@usaid.gov, with a copy to Ms. Suzanne H. Johnson, Contracting/Agreement Officer, at sjohnson@usaid.gov. Responses to this RFI will be accepted through the date and time indicated above.

Please include the title “RFI Inquiry_Commercial and Investment Alternative Dispute Resolution” in the subject line of your e-mail. Responses should be sent as email attachment in English.

Responses are limited to ten (10) pages and shall include, at a minimum the following: (1) the name and address of the organization; (2) primary point of contact, phone number, and e-mail address; (3) Your comments or responses to USAID questions.

After USAID reviews and considers responses, a decision will be made internally regarding whether and how to proceed with a new activity.

You will only receive an electronic confirmation acknowledging receipt of your response, but will not receive individualized feedback on any suggestions. No basis for the claims against the U.S. Government shall arise as a result of a response to this request for information or from the Government’s use of such information. Specific questions about this RFI should be directed only to the email addresses identified above.

Thank you for your assistance and interest in USAID programs.

[End of Request for Information]