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## Sustaining Vietnamese Economic Development by Improving the Transparency of Choice of Law Decisions

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## **SUSTAINING VIETNAMESE ECONOMIC DEVELOPMENT BY IMPROVING THE TRANSPARENCY OF CHOICE OF LAW DECISIONS**

*Luong Duc Doan & Trinh Thi Hong Nguyen<sup>1</sup>*

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*Without a doubt, Vietnam has enjoyed outstanding economic performance since the adoption of doi moi in 1986. To a significant extent, Vietnam has accomplished this through the dramatic increase in international trade and investment. However, further economic progress will be undermined if international partners begin to question the fairness of the Vietnamese legal system – especially in the application of choice of law principles. At best, a perceived lack of transparency in choice of law decisions will*

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*increase uncertainty; at worst, it will foster the impression that Vietnamese Courts do not treat international parties fairly. Accordingly, this article recommends that all Vietnamese civil court cases involving non-Vietnamese parties should be published in a public, easily searchable database that discloses the traditional case identification information, the law applied, and the underlying rationale for the ultimate choice of law selection in the case.*

## I. INTRODUCTION

Over the last three decades, Vietnam's economy has blossomed. For example, in 2018, Vietnam's GDP increased 7.08%;<sup>2</sup> and the export of goods increased 13.8% to an estimated value of \$244.7 billion.<sup>3</sup> At the same time, 2018 foreign direct investment into Vietnam included approximately 3,046 new licensing projects with registered capital of almost \$18 billion.<sup>4</sup> Of course, accompanying these increases in international trade and investment is an increase in legal controversies. It is becoming more common for Vietnamese Courts to be asked to adjudicate legal matters involving parties from both inside and outside of Vietnam. Undoubtedly, in anticipation of this situation, the Vietnamese National Assembly consciously endeavored to develop, clarify, and codify appropriate private international law. One critical component of this effort was the development of Vietnamese choice of law rules.<sup>5</sup>

The first set of Vietnamese choice of law rules appeared in 1995 in the first Civil Code.<sup>6</sup> These were subsequently improved through the enactment of the Civil Codes in 2005<sup>7</sup> and 2015.<sup>8</sup> With each iteration, the

2. Tong Cuc Thong Ke [General Statistics Office] <https://www.gso.gov.vn> [<https://perma.cc/TW3B-VK6M>].

3. *Id.*

4. *Id.*

5. See also Vinh Quang, *Vụ Pháp Luật Quốc Tế, Bộ Tư Pháp - Người "Gác cửa" Các Văn Đề Pháp Lý Quốc Tế*, Bộ TƯ PHÁP (April 10, 2018) [<https://perma.cc/4ZBS-RVYV>].

6. Bo luat dan su Viet Nam [Civil Code] (1995), [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=45459](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=45459) [<https://perma.cc/8ZH2-78AF>] (contains 13 provisions on the applicable law to civil relations involving foreign factors. The English translation of the Civil Code 1995 can be accessed through the website of the International Labor Organization ILO).

7. Bo luat dan su Viet Nam [Civil Code] (2005) No. 33/2005/QH11, <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn001en.pdf> [<https://perma.cc/BVR2-TUV5>] (The Civil Code 2005 contains 20 provisions on the applicable law to civil relations involving foreign factors. The English translation of the Civil Code 2005 can be accessed through this website).

8. Bo luat dan su Viet Nam [Civil Code] (2015) No. 91/2015/QH13, <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn001en.pdf> [<https://perma.cc/A5TP-7N82>] (The Civil Code 2015 contains 25 provisions on the applicable law to civil relations involving foreign factors. The English translation of the Civil Code 2015 can be accessed through the website of the World Intellectual Property Organization WIPO).

official Vietnamese choice of law rules were improved to clarify the appropriate choice of law in civil matters related to such areas as contracts, tort, and marriage.<sup>9</sup> If applied objectively and correctly, the evolving Vietnamese choice of law principles would provide a predictable, transparent, and fair adjudication of rights for all parties.<sup>10</sup> At the same time, developing these legal principles would support the continued economic growth of international trade and investment in Vietnam. This raises the rather obvious question of whether or not the improved choice of law rules have achieved their intended goals? Over time, have the choice of law decisions by Vietnamese courts become more predictable, fair, and transparent? As to the last question – improved transparency – the answer clearly remains “no.” Today, even with significant effort, it is impossible to definitively determine how Vietnamese courts make their choice of law decisions. Transparency is lacking. This, by itself, is a problem.

What is known is that, from 2003 to 2013, Vietnamese courts decided 12,473 civil cases involving “foreign elements.”<sup>11</sup> As expected, during this time period there appears to have been an annual increase in the number of cases involving “foreign elements.”<sup>12</sup> However, it is still impossible to conduct any systemic sampling of these cases to determine how Vietnamese Courts actually applied choice of law rules. First, the portal<sup>13</sup> used to retrieve Vietnamese Court decisions does not provide any

9. See also JÜRGEN BASEDOW, *Choice of Law*, in ENCYCLOPEDIA OF PRIVATE INTERNATIONAL LAW, 311–319 (Jürgen Basedow, Giesela Rühl, Franco Ferrari, Pedro Alberto de Miguel Asensio eds., Elgar Publishing (2017)).

10. It should be noted that private international law in Vietnam is not confined to choice of law. See, e.g., David Stewart, *New Directions in Private International Law*, Agenda Internacional, Año XVI, N° 27, 255 (2009) (“Most U.S practitioners and judges think of private international law as referring to these choice of law rules [...] A broader view, typically held by those individual trained in civil law systems, expands the definition to include the provisions of domestic (national) law governing the exercise of domestic jurisdiction over people, property and transactions in trans-border situations, was well as the enforcement of foreign judgments.” Private international law also encompasses rules allocating jurisdiction in international civil cases, rules assigning the applicable law to the relationships and rules pertaining the recognition and enforcement of foreign judgments).

11. Bo luat dân sự Việt Nam [Civil Code] (2015) No. 91/2015/QH13, art. 663(2), <https://tinyurl.com/r35kdax> [<https://perma.cc/VX4U-G4WG>]; The Civil Code of the Socialist Republic of Vietnam 2015 at Art. 663(2) (Civil cases refers to cases involving foreign elements. “Civil relation involving a foreign element means a civil relation in any of the following cases: (a) At least one of the participating parties is a foreign individual or legal entity; (b) The participating parties are Vietnamese citizens or legal entities but the establishment, modification, implementation or termination of such relation happened in a foreign country; (c) The participating parties are Vietnamese citizens or legal entities but the subject matter of such civil relation is located in a foreign country.”).

12. The authors of this article were unable to find recent data.

13. Công Bố Bản Án, <https://congbobanan.toaan.gov.vn/> [<https://perma.cc/AB3M-UF82>].

means for either full-text searching of decisions or any category to identify cases involving “foreign elements.” Second, of the handful of cases that *were* successfully identified, all failed to provide any reasoning behind the applied choice of law. Third, given that all of the identified cases unanimously selected Vietnamese law, an observer cannot help but question the efficacy of the actual implementation. In order to address these concerns, it is clear that the portal design<sup>14</sup> should be improved. More importantly, all Vietnamese civil court cases involving any foreign elements should be required to disclose, in a publicly accessible database, both the applicable choice of law and the underlying rationale for the ultimate choice of law decision. The future economic growth of Vietnam may depend upon it.

### I. IDENTIFYING THE PROBLEM: VIETNAMESE COURT PRACTICES UNDER THE CIVIL CODE 2005

In 2014, when the National Assembly considered amending the Vietnamese Civil Code 2005 (ultimately by passing the 2015 Civil Code, effective January 1, 2017<sup>15</sup>), the Ministry of Justice (MOJ) published an Explanation Report. The Report examined the practical application of the choice of law rules codified in the 2005 Civil Code.<sup>16</sup>

Along with the extensive and strong international integration process of Vietnam in the past 20 years, Vietnam’s civil and commercial relations with foreign elements have also developed increasingly in terms of content and quantity. However, the initial statistics from state agencies directly handling civil cases involving foreign elements show the fact that the application of the provisions of the Civil Code 2005, which in principle is the first basis to determine the laws applicable to civil relations involving foreign elements, are very limited, not commensurate with the level of increase and strong change of civil and commercial relations with foreign elements.<sup>17</sup>

In effect, the MOJ formally acknowledged that the application of Vietnam’s choice of law rules failed to keep up with Vietnam’s economic development. With regard to disputes in civil and commercial

14. A way to improve the portal would be to have a separate category for civil cases involving foreign elements.

15. Therefore, the Civil Code 2005 governed until Dec. 31, 2016. The Civil Code 2015 was applied after that date.

16. *Bo luat dân sự Việt Nam* [Civil Code] (2005) No. 33/2005/QH11, part E, p. 82 <https://www.wipo.int/edocs/lexdocs/laws/en/vn/vn001en.pdf> [<https://perma.cc/BVR2-TUV5>].

17. *Bo luat dân sự Việt Nam* [Civil Code] (2015) No. 91/2015/QH13, Art. 663(2) at 83 [<https://perma.cc/A5TP-7N82>] (Translated into English by the authors of this article).

relationships, the Report pointed out a particular problem regarding the application of the then existing choice of law rules. If the parties did not have a pre-existing agreement determining the applicable law, then the Vietnamese courts “mostly”<sup>18</sup> exclusively applied Vietnamese law to resolve the disputes.<sup>19</sup> Making matters worse, the courts neither explained their reasons for the Vietnamese law selection nor which specific conflict of law rules were applied.<sup>20</sup>

To supplement the 2014 conclusion of the MOJ, we first attempted to identify cases that occurred after the MOJ report but before the new 2015 Civil Code effective date (January 1, 2017). To do this, we investigated all cases we could find involving “foreign elements” from 2014 to 2017 (cases occurring after the MOJ report and ending when the 2005 Code ceased to be in effect). The authors only identified three (3) cases<sup>21</sup> during this period where Vietnamese courts heard civil disputes involving foreign elements.

As an initial matter, the small number of cases identified essentially confirms the continued lack of transparency under the Code 2005. Nonetheless, by looking at the handful of identified cases, none of the identified court decisions made any express reference to any choice of law rules. To anyone reviewing these decisions – including non-Vietnamese investors – it is impossible to determine whether or not the Vietnamese courts properly applied the prescribed choice of law rules. In the handful of identified decisions, the courts only provided conclusory statements about which substantive rules were applied. There was no effort to provide any rationale for the particular selection. Moreover, looking at the broader historical context, it appears that the lack of Court explanation is not anything new.

In 2010, just as in the 2014 MOJ report, a leading book about Vietnamese private international law similarly identified case reporting problems in Vietnamese courts. The authors of the book identified the situation as the “immature” stage of the application of choice of law rules

18. Ministry of Justice, *supra* note 11 (The MOJ report said “mostly” however, the authors were unable to identify any cases where a law other than Vietnam was applied).

19. *Id.* at 83.

20. *Id.*

21. Judgment No. 09/2016/KDTM-GDT (Supreme People’s Court May 20, 2016), <https://congboaban.toaan.gov.vn/2ta1079t1cvn/chi-tiet-ban-an> [https://perma.cc/2BQH-PK3X] (regarding disputes between members of a company); Judgment No. 15/2016/KDTM-GDT (Supreme People’s Court Sept. 7, 2016), [https://perma.cc/JY69-BD56] (regarding dispute of a construction contract); Judgment No. 61/2016/HNST (People’s Court of Can Tho Province Sept. 26, 2016), <https://congboaban.toaan.gov.vn/2ta225t1cvn/chi-tiet-ban-an> [https://perma.cc/G27H-NDM3] (regarding a divorce dispute).

before the Vietnamese courts.<sup>22</sup> The analysis of judgments and decisions at that time, which the authors collected themselves through personal contacts with many provincial courts, revealed that Vietnamese courts had avoided the private international law perspective for decades.<sup>23</sup> Having confirmed the lack of predictable, fair, and transparent choice of law decisions by Vietnamese courts covered by the 2005 Code, the next challenge was to determine if the improved choice of law provisions in the 2015 Code facilitated any noticeable improvements.

## II. SURVEY OF CASES FROM 2017<sup>24</sup>

In the hope of discovering improvements in Vietnamese choice of law practices after the 2015 Code implementation, next we made a survey of judgments on civil matters involving foreign elements decided by Vietnamese courts from January 1, 2017 (the effective date of the new Code) onwards. Brief discussions of the cases identified from this survey are attached and summarized in the appendix. It should be noted that *Resolution No. 03/2017/NQ-HĐTP dated March 16, 2017 of the Supreme People's Court* requires courts judgments and decisions to be published on the Supreme People's Court's Electronic Portal for Announcing Judgments and Decisions.<sup>25</sup> This administrative rule took effect July 1, 2017. Therefore, as an initial matter, there is some high-level indication of progress in improving the general transparency of Vietnamese court decisions. However, major problems remain in achieving substantive progress regarding choice of law decisions. For instance, even after the new code and administrative rules, cases published on the portal are *still* not freely searchable. International civil cases *still* have not been counted and reported separately; they are *still* spread throughout the many branches of law. There is *still* no readily apparent means of conveniently identifying these cases. Not surprisingly, robust journals, reports, and comments specifically on Vietnamese private international law cases *still* do not exist. Interested researchers *still* have to pursue ad hoc methods to discover any appropriate cases.

22. Do van Dai & Mai Hong Quy, *Tu phap quoc te Vietnam [Vietnamese Private International Law]*, NHÀ XUẤT BẢN CHÍNH TRỊ QUỐC GIA [NATIONAL POLITICAL PUBLISHING HOUSE] (2010), at 706.

23. *Id.* (take an example of a contract where a dispute arose with the place of performance in Laos. The court would have considered what law governed the contract (Vietnamese law or Laos law). However, in practice the court offered the substantive solutions without specifying which law was applied).

24. The Civil Code 2015 went into effect on Jan. 1, 2017.

25. Công Bố Bàn Án, *supra* note 13.

For this article, we did our best to manually screen judgments (beginning January 1, 2017 through April 1, 2020) published on the Court's Portal.<sup>26</sup> In total, the search of slightly over three years identified only 22 judgments/decisions involving international civil disputes rendered by Vietnamese courts. Just as in previous periods, the identified cases all failed to clearly disclose whether the appropriate choice of law rules were applied.<sup>27</sup> Further, none of the reviewed judgments ever mentioned whether choice of law was considered.

In all judgments, whether related to contracts, labor, or divorce, the decisions were silent as to the choice of law determination. The judgments did not even specify that Vietnamese law was applied. The decisions did not address the international dimensions of the relationship from which the disputes arose. They totally neglected the international considerations related to the cases.

Just as any international investor interested in understanding how the Vietnamese Courts apply choice of law rules, we were unable to determine whether the courts were right or wrong. For example, for contract disputes, we do not know whether parties had agreed on the application of Vietnamese law during the proceedings, or if the international parties requested the application of foreign law but the request was rejected by the judges. In short, notwithstanding the noble intentions of the National Assembly to improve Vietnam's choice of law rules, even today no one can know whether the improved standards are applied correctly.<sup>28</sup>

### III. POTENTIAL CONSEQUENCES

Having confirmed the continued lack of transparency – and the continued questions regarding the predictability and fairness of choice of law decisions by Vietnamese courts – the remaining issue is whether these continued transgressions have any practical significance. After all, sophisticated international investors can easily avoid the weaknesses of the Vietnamese courts by contractually opting for private arbitration – at least in contractual (rather than tort) matters. Moreover, why should

26. *Id.*

27. A list of the specifically identified cases is included in the Appendix.

28. Private international arbitration may be one way that international parties are coping with the lack of transparency by Vietnamese courts. For example, the Vietnamese International Arbitration Center (VIAC) continues to handle a significantly increasing number of cases. See Số Vụ Giải Quyết Tranh Chấp Thương Mại Tại VIAC Tăng Mạnh, VIAC (Oct. 28, 2019), <http://www.viac.vn/tin-tuc-su-kien/so-vu-giai-quyet-tranh-chap-thuong-mai-tai-viac-tang-manh-n264.html> [<https://perma.cc/G76Y-EQSQ>].

Vietnamese citizens care whether or not the National Assembly's intentions in the 2015 Code are effectively applied by Vietnamese courts?

#### *A. Consequence of Questionable Treatment of International Parties*

Questions surrounding the treatment of international parties in civil cases poorly serves Vietnam's quest to increase international investment. Although large formal contracts may opt for private arbitration, the broader goal of investment requires more. Broader investment by private parties (whether individual or corporate) requires transparency, predictability, and legal certainty when engaging in international transactions.<sup>29</sup> Consider contracts. Knowing what law will be applied by Vietnamese courts helps traders decide how to best reduce risks when trading cross-border. Vietnam has replied to these trader expectations with major developments in the codification of choice of law rules. Art. 683<sup>30</sup> of the 2015 Civil Code allows parties to select the applicable contract law when making their agreements.<sup>31</sup> In the absence of agreement, the same article provides for bilateral choice of law rules employing the closest connection principle. This principle selects the appropriate substantive law with which the contract is most closely connected. It can be the law of the forum or foreign law, depending on the facts of the cases.<sup>32</sup> These rules *should* provide parties of international transactions with confidence as to what the applicable law will be in Vietnamese courts. Nevertheless, even with such rules in the Civil Code, the courts, in fact, have only applied the domestic law. There have been no explanations for this selection. As such, legal certainty and transparency are lost in the process.

This treatment by the Vietnamese courts also adversely affects the view of international parties as to the transparency in Vietnamese adjudication for international cases. International parties may assume that they have been treated unfairly because Vietnamese parties enjoy domestic law applied to international transactions without clear and accountable justification that the international parties can access.

29. See also JÜRGEN BASEDOW, THE LAW OF OPEN SOCIETIES: PRIVATE ORDERING AND PUBLIC REGULATION OF INTERNATIONAL RELATIONS: GENERAL COURSE ON PRIVATE INTERNATIONAL LAW (Leiden/Boston: Martinus Nijhoff) (2013).

30. Bo luat dân sự Việt Nam [Civil Code] (2015), *supra* note 8, at art. 683 ("1. Parties in a contractual relationship may agree to choose the law applicable to the contract, except in the cases provided in clauses 4, 5 and 6 of this article. Where the parties have not agreed on the applicable law, the law of the country having the closest connection with such contract shall apply. 2. The laws of the following countries shall be deemed to have the closest connection with a contract [...]").

31. *Id.* at art. 683 (1).

32. *Id.* at art. 683 (2).

At the same time, the Vietnamese court decisions are not compatible with the principles enshrined in the economic analysis of private international law. To follow the economic analysis principles, deference must be given to party autonomy and economic efficiency. Quite often, this determination aligns with the national law of the country with the closest connection to the matter. Similarly, the applicable law in torts, for example, has proved to comply with the requirements of economic theory.<sup>33</sup> Although the codified choice of law rules in Vietnam ostensibly supports these principles, Vietnamese courts do not show that they enforce them. Thus, Vietnamese courts have not made use of the benefits that these principles may bring to the economy.

In addition, the treatment of Vietnamese courts does not contribute to the country's competitiveness for the national law to be chosen by parties for their transactions. Since party autonomy allows parties such choice, countries effectively compete for efficient law.<sup>34</sup> This means not only good-looking rules but also wide-spread recognition of accountable practices and enforcement. Divergent court practices regarding choice of law rules undermines Vietnam's competition in this regard.

### *B. Endanger the Role of Private International Law*

On a global scale, the practical importance of private international law has grown in the context of our "open society."<sup>35</sup> Vietnam needs to meet two conditions<sup>36</sup> for the development of this branch of law: a significant increase in international civil relations and the broad move towards codification – and application - of private international rules, specifically choice of law rules enshrined in the Civil Code.<sup>37</sup> Recognition of the importance of the second condition is reflected in the actions of Vietnamese legislators trying to address the choice of law problem. Indeed, legislators took the proper steps decades ago to shape Vietnamese society and economy from an *ex ante* perspective. However, the distance between black letter rules and Vietnamese court adjudications of the

33. GIESELA RÜHL, *Economic analysis and Private International Law*, in ENCYCLOPEDIA OF PRIVATE INTERNATIONAL LAW, 575, 581 (Jürgen Basedow, Giesela Rühl, Franco Ferrari, Pedro Alberto de Miguel Asensio eds., Elger Publishing 2017).

34. Ralf Michaels, *Economic of Law as Choice of Law*, 71(3) LAW AND CONTEMPORARY PROBLEMS. 73, 87 (2008).

35. See also BASEDOW, *supra* note 29.

36. *Id.*

37. *Supra* notes 6–8 (the number of choice of law articles has increased from 13 in the Civil Code 1995 to 20 in the Civil Code 2005 and then 25 in the Civil Code 2015).

choice of law problem needs to be closer and more transparent.<sup>38</sup> Because if formal Vietnamese rules develop to meet global standards while Vietnamese courts undermine them, the strength of discipline as a whole is reduced. As long as the courts do not uphold the choice of law rules, the value of private international law in Vietnam is in danger.

### C. Rule of Law and Access to Justice

The objective application of choice of law rules reinforces the attractiveness of international investment into Vietnam. However, when choice of law rules are not objectively enforced, both justice and future investment is accordingly undermined.<sup>39</sup> Take Vietnamese victims of environmental pollution caused by transnational companies for instance. *Formosa Ha Tinh Steel Corporation (Formosa Ha Hinh)* caused severe environmental damage to Central Vietnam's coastal ocean in 2016. The *Formosa Ha Tinh* company is established in Vietnam, but 100% of shares are held by its mother company in Taiwan - *Formosa Plastics Group*. As a subsidiary company, *Formosa Ha Tinh* was regarded as a Vietnamese legal entity since Vietnamese conflict of law rules use incorporation theory to determine the nationality of companies. After the damage, people petitioned, requesting that *Formosa Ha Tinh* compensate for damages to the sea, which ultimately resulted in massive fish deaths. These were considered domestic petitions and handled by *Ky Anh District (Ha Tinh Province)*. *Ky Anh District* ultimately returned the 506 petitions because they failed to provide documentation and evidence to prove actual damage necessary per Clause 5, Article 189 of the Civil Procedure Code 2015. Ultimately, this was settled by the effective decision of the competent State agency under Point C, Clause 1, Article 192 of the aforementioned Code. Specifically, the Prime Minister issued Decision 1880 on October 13, 2016 about the levels of compensation for the victims in the four central provinces damaged by marine environmental incidents. *Formosa Ha Tinh* agreed to compensate 500 million US dollars to the victims.<sup>40</sup>

38. See also Wang Hui, *A Review of China's Private International Law during the 30-year Period of Reform and Opening – Up* (Asian Law Institute, Working Paper No. 002, 2009).

39. See Van Den Eeckhout, Veerle, *The Private International Law Dimension of the Principles. An Introduction*, SWISS INSTITUTE OF COMPARATIVE LAW (February 4, 2015), <http://dx.doi.org/10.2139/ssrn.2560268> [<https://perma.cc/CRP3-EZCT>].

40. Liu Li-jen & Jake Chung, Taipei Times: Vietnamese Plaintiffs to Fight Dismissal of FPG Case, JFFV (Jan. 17, 2020), <https://jffv.org/2020/01/17/taipei-times-vietnamese-plaintiffs-to-fight-dismissal-of-fpg-case/> [<https://perma.cc/E8MB-W5ZH>] (Vietnamese plaintiffs took additional litigation before a Taiwanese court against the mother company, *Formosa Plastic Group*. The *Taipei*

Let us consider a scenario in which Vietnamese victims bring an environmental damage claim directly against a Taiwanese controlling company, or even in conjunction with a Vietnamese subsidiary, before a Vietnamese court. If jurisdiction can be established, the plaintiffs may request the applicable law more favorable to them. If that is Taiwanese law, but the Vietnamese court applies Vietnamese law without a reasonable explanation as to why, the court has effectively closed the door for similar victims that want to apply the law of the country of domicile, for them to receive better redress.

#### IV. RECOMMENDATION AND CONCLUSION

Clearly, Vietnam has made great progress on multiple fronts since the adoption of *doi moi* in 1986. To a large extent, Vietnamese leadership (especially the National Assembly) should be congratulated for repeatedly seeking to improve the formal choice of law rules necessary for continued economic growth and international investment. Indeed, even the Vietnamese Supreme Court should be congratulated for taking first steps to improving judicial transparency. However, more is necessary. When it is impossible to determine whether Vietnamese courts have made fair and informed choice of law decisions, continued Vietnamese economic growth can become imperiled. The continued economic success of Vietnam remains dependent upon predictable, fair, and transparent choice of law decisions by Vietnamese courts. In order to achieve this goal, Vietnam should:

- Improve the design of the Portal of the Supreme People's Court used to retrieve Vietnamese Court decisions. This includes enabling full-text searching of case decisions involving foreign elements or having a category of cases involving foreign elements. Summary details of those cases may be available in English and/or French.
- Require all Vietnamese civil court cases involving any foreign element to disclose, in a publicly accessible database, both the applicable choice of law and the underlying rationale for the choice of law decision.
- Encourage journals, reports and comments specifically on Vietnamese private international law cases.

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*District Court dismissed the case against Formosa Plastic Group for a lack of jurisdiction; more information available at JFFV-Justice of Formosa Victims).*

#### IV. APPENDIX – LIST OF CASES REVIEWED

Below is the list of 22 judgments/decisions rendered by Vietnamese courts dated from January 1, 2017 to April 1, 2020. They are listed in three categories, based on the court level and number of decisions rendered: A. Judgments of Provincial People's Courts: 15 judgments; B. Judgments of People's High Courts: 4 judgments; and C. Judgments of the Supreme People's Court: 3 judgments/decisions.

Our review of the listed cases reveals that in 1 out of 22 cases, *Judgment No. 08/2018/DS-PT dated 20<sup>th</sup> April 2018 of People's High Court at Ho Chi Minh City, regarding divorce having foreign elements*, the People's High Court at Ho Chi Minh City reported the application of choice of law rules on divorce involving foreign elements embedded in Article 127 of the Marriage and Family Law 2014. The court however did not explain how it applied the choice of law.

Additionally, in the remaining 21 cases all three court levels never mentioned the choice of law.

##### A. Judgments of Provincial People's Courts<sup>41</sup>:

1. Judgment No. 38/2017/HNGD-ST dated 22<sup>nd</sup> May 2017 of People's Court of Kien Giang Province, regarding divorce involving foreign elements.<sup>42</sup> <https://congbobanan.toaan.gov.vn/2ta6327t1cvn/chi-tiet-ban-an> [<https://perma.cc/T5BS-BX8E>] - ***Decision does not mention choice of law.***

2. Judgment No. 824/2017/LĐ-ST dated 06th July 2017 of People's Court of Ho Chi Minh City, regarding dispute on unilaterally terminating the labor contract. <https://congbobanan.toaan.gov.vn/2ta158027t1cvn/chi-tiet-ban-an> [<https://perma.cc/TA2F-5VFX>] - ***Decision does not mention choice of law.***

3. Judgment No. 862/2017/HNGD-ST dated 12<sup>nd</sup> July 2017 of People's Court of Ho Chi Minh City, regarding dispute on unilaterally terminating the labor contract. <https://congbobanan.toaan.gov.vn/2ta112737t1cvn/chi-tiet-ban-an> [<https://perma.cc/8BRG-XQW4>] - ***Decision does not mention choice of law.***

4. Judgment No. 17/2017/KDTM-ST dated 29<sup>th</sup> Sept 2017 of People's Court of Da Nang City, regarding disputes between a person who is not yet a member of the company but has a transaction of transfer of contributed capital with the company or company member.

41. See Bo luat tō tung dân su Viet Nam [Civil Procedure Code] (2014), Art. 35(3) (provincial courts will hear international civil cases of first instance).

42. The regarding content is directly translated from the judgments.

<https://congbobanan.toaan.gov.vn/2ta39462t1cvn/chi-tiet-ban-an>  
 [<https://perma.cc/NHQ5-2ZH4>] - **Decision does not mention choice of law.**

5. Judgment No. 792/2018/HNGD-ST dated 20st June 2018 of People's Court of People's Court of Ho Chi Minh City, regarding disputes on international sales contracts. <https://congbobanan.toaan.gov.vn/2ta427559t1cvn/chi-tiet-ban-an> [<https://perma.cc/BG95-F3JC>] - **Decision does not mention choice of law.**

6. Judgment No. 36/2018/KDTM-ST dated 19th Oct 2018 of People's Court of Hanoi City, regarding disputes on intellectual property. <https://congbobanan.toaan.gov.vn/2ta225689t1cvn/chi-tiet-ban-an>  
 [<https://perma.cc/2JH7-NNZT>] - **Decision does not mention choice of law.**

7. Judgment No. 01/2018/KDTM-ST dated 29th Oct 2018 of People's Court of Hung Yen Province, regarding disputes on intellectual property. <https://congbobanan.toaan.gov.vn/2ta233400t1cvn/chi-tiet-ban-an> [<https://perma.cc/8NX8-LB96>] - **Decision does not mention choice of law.**

8. Judgment No. 02/2019/KDTM-ST dated 22nd Mar 2019 of People's Court of Hai Phong City, regarding disputes on contract transferring contributed capital of company. <https://congbobanan.toaan.gov.vn/2ta264281t1cvn/chi-tiet-ban-an>  
 [<https://perma.cc/3BKJ-H8XW>] - **Decision does not mention choice of law.**

9. Judgment No. 05/2019/KDTM-ST dated 18th July 2019 of People's Court of Binh Duong Province, regarding disputes on international sales contracts. <https://congbobanan.toaan.gov.vn/2ta331039t1cvn/chi-tiet-ban-an> [<https://perma.cc/M9GP-U6PW>].

10. Judgment No. 28/2019/KDTM-ST dated 24th July 2019 of People's Court of Hanoi City, regarding disputes on intellectual property of domain name. <https://congbobanan.toaan.gov.vn/2ta340454t1cvn/chi-tiet-ban-an> [<https://perma.cc/K9CP-RUM8>] - **Decision does not mention choice of law.**

11. Judgment No. 32/2019/KDTM-ST dated 12nd Aug. 2019 of People's Court of Hanoi City, regarding disputes on international sales contracts. <https://congbobanan.toaan.gov.vn/2ta427908t1cvn/chi-tiet-ban-an> [<https://perma.cc/83XW-KL6W>] - **Decision does not mention choice of law.**

12. Judgment No. 46/2019/KDTM-ST dated 30<sup>th</sup> Oct 2019 of People's Court of Hanoi City, regarding dispute on an event service contract. <https://congbobanan.toaan.gov.vn/2ta460943t1cvn/chi-tiet-ban->

an [<https://perma.cc/8CTZ-NZNF>] - ***Decision does not mention choice of law.***

13. Judgment No. 50/2019/KDTM-ST dated 13st Nov 2019 of People's Court of Hanoi City, regarding disputes on international sales contracts. <https://congbobanan.toaan.gov.vn/2ta449347t1cvn/chi-tiet-ban-an> [<https://perma.cc/89RR-ERJD>] - ***Decision does not mention choice of law.***

14. Judgment No. 220/2019/HNGD-ST dated 31st Dec 2019 of People's Court of Hai Phong City, regarding divorce involving foreign elements. <https://congbobanan.toaan.gov.vn/2ta461711t1cvn/chi-tiet-ban-an> [<https://perma.cc/SB7B-83BJ>] - ***Decision does not mention choice of law.***

15. Judgment No. 22/2020/HNGD-ST dated 10st Feb 2020 of People's Court of Hai Phong City, regarding divorce involving foreign elements. <https://congbobanan.toaan.gov.vn/2ta459400t1cvn/chi-tiet-ban-an> [<https://perma.cc/SR45-U4JT>] - ***Decision does not mention choice of law.***

#### B. Judgments of People's High Court<sup>43</sup>:

1. Judgment No. 01/2018/LĐ-PT dated 15<sup>th</sup> Jan 2018 of People's High Court at Da Nang City, regarding dispute on unilaterally terminating the labor contract. <https://congbobanan.toaan.gov.vn/2ta64290t1cvn/chi-tiet-ban-an> [<https://perma.cc/6A8C-TFYX>] - ***Decision does not mention choice of law.***

2. Judgment No. 08/2018/DS-PT dated 20<sup>th</sup> April 2018 of People's High Court at Ho Chi Minh City, regarding divorce involving foreign elements. <https://congbobanan.toaan.gov.vn/2ta93590t1cvn/chi-tiet-ban-an> [<https://perma.cc/883V-PJFN>] - **Decision reports application of Vietnamese choice of law (Article 127 of Vietnamese Marriage and Family Law 2014) without explanation.**

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43. The People's High Court is the third-level adjudicating body from the bottom up in the four-level trial system of the Vietnam People's Court. The People's High Courts are competent under the Supreme People's Courts and above the provincial/municipal People's Courts. People's High Courts officially began operation as of June 1, 2015. The duties and powers of a People's High Court are prescribed in Art. 29 of the Law on Organization of the People's Courts 2014, as follows: (i) To conduct appellate trial of cases in which first-instance judgments or decisions of People's Courts of provinces or centrally run cities within their territorial jurisdiction which have not yet taken legal effect are appealed or protested against in accordance with the procedural law; (ii) To conduct cassation or reopening trials of legally effective judgments or decisions of provincial/municipal People's Courts, People's Courts of rural districts, urban districts, towns, provincial cities and the equivalent of territorial jurisdiction is protested in accordance with the procedural law.

3. Judgment No. 07/2019/HNGD-PT dated 09<sup>th</sup> April 2019 of People's High Court at Ho Chi Minh City, regarding divorce involving foreign elements <https://congbobanan.toaan.gov.vn/2ta295933t1cvn/chi-tiet-ban-an> [<https://perma.cc/CB7H-N9GN>] - ***Decision does not mention choice of law.***

4. Judgment No. 01/2019/LĐ-PT dated 04<sup>th</sup> Oct 2019 of People's High Court at Da Nang City, regarding dispute on unilaterally terminating the labor contract. (<https://congbobanan.toaan.gov.vn/2ta372469t1cvn/chi-tiet-ban-an>) [<https://perma.cc/CP9G-344B>] - ***Decision does not mention choice of law.***

C. Judgments of Supreme People's Court<sup>44</sup>:

1. Judgment No. 01/2017/HNGD-GĐT dated 15<sup>th</sup> Feb 2017 of Supreme People's Court, regarding dispute on property after divorce. <https://congbobanan.toaan.gov.vn/2ta1054t1cvn/chi-tiet-ban-an> [<https://perma.cc/4A7B-3AUH>] - ***Decision does not mention choice of law.***

2. Decision No. 12/2018/DS-GĐT dated 11<sup>th</sup> May 2017 of the Supreme People's Court regarding dispute over house ownership. <https://congbobanan.toaan.gov.vn/2ta357291t1cvn/chi-tiet-ban-an> [<https://perma.cc/N9RT-KCZ5>] - ***Decision does not mention choice of law.***

3. Decision No. 14/2018/DS-GĐT dated 26<sup>th</sup> June 2018 of the Supreme People's Court regarding dispute over loan contract. <https://congbobanan.toaan.gov.vn/2ta357291t1cvn/chi-tiet-ban-an> [<https://perma.cc/8LZ2-AGDZ>] - ***Decision does not mention choice of law.***

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44. See Law on Organization of the People's Courts (2014), art. 20 (The Supreme People's Court is the highest judicial body of Vietnam; it shall review according to cassation and reopening procedure those judgments and decisions rendered by other courts).