

MULTILAW LITIGATION AND
DISPUTE RESOLUTION
PRACTICE GROUP

*ENFORCEMENT OF FOREIGN
JUDGMENTS PROJECT*



REACHING ACROSS BORDERS

FUNDAMENTAL PRINCIPLES REGARDING
THE ENFORCEMENT OF
FOREIGN JUDGMENTS IN
VIETNAM

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I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)

A. Ability to Apply for Recognition and Enforcement of a Court Judgment

- i. Is it possible to apply for enforcement of a foreign court judgment in your country?**

Answer: Yes, it is.

Pursuant to Article 344.1 of the Civil Proceedings Code of Vietnam of 2004 and its amendment in 2011 (collectively referred to as the “**Civil Proceedings Code**”), the winning party is entitled to request the competent court of Vietnam to recognize and enforce a foreign court judgment. Nevertheless, a foreign court judgment is not automatically recognized and enforced in Vietnam. Rather, it is subject to the rules set out under Section I.C(i) below.

B. Applicable Law: General Rules

- i. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?**

Answer: The applicable laws include:

- (a) The Civil Proceedings Code;
- (b) The Law on Enforcement of Civil Judgments of 2008; and
- (c) The Ordinance on Court Fees of 2009.

C. Special Rules: European Union

- i. Are there any special rules regarding the enforcement of a foreign court judgment in your country?**

Answer: Yes, there are.

Vietnamese courts only recognize and enforce a foreign court judgment if it falls into either of the following categories:

- (a) Such judgment is rendered by a court of a country with which Vietnam has entered into an international agreement on this matter (i.e., the recognition and enforcement of court judgments of contracting states);
- (b) Such judgment is recognized and enforced under the specific laws of Vietnam; or

- (c) Such judgment is recognized and enforced by Vietnamese courts on a reciprocal basis.

Note: Currently no specific law of Vietnam deals with the recognition and enforcement of foreign court judgments as listed in item (b) above. Consequently, no foreign court judgment has been recognized and enforced in Vietnam on this basis.

2. **Does the European Union have a special procedure to enforce court judgments coming its member states?**

Answer: No, it does not. In fact, a court judgment from a European Union member is recognized and enforced in Vietnam in accordance with the rules set out in the preceding Sub-Section.

D. Average Duration of Enforcement Procedure

1. **What is the average length of time for this kind of procedure?**

Answer: The statutory time length for the recognition of a foreign court judgment is approximately six months from the date of submission of the application for the recognition and enforcement of a foreign court judgment. The statutory time length for the enforcement of a recognized judgment is approximately two months from the date on which the foreign court judgment is recognized. However, due to the complexity of the procedures and the red tape in Vietnam, the actual time length for the recognition and enforcement of a foreign court judgment may last at least one year.

II. DENIAL OF RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT JUDGMENT: REASONS

- A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?**

Answer: According to Article 356 of the Civil Proceedings Code, a foreign court judgment shall not be recognized and enforced in Vietnam in the following cases:

- (a) Such judgment is not yet legally enforceable (i.e., final and definitive) in accordance with the laws of the country where it is rendered;
- (b) The person against whom the enforcement is sought (i.e. the losing party) was absent from the trial held by the foreign court because he/she had not been duly summoned;
- (c) The dispute falls under the exclusive jurisdiction of the court of Vietnam;

- (d) The case has been resolved by a Vietnamese or foreign court and has been already enforced in Vietnam;
- (e) The time limit for enforcement of the judgment has expired in accordance with the laws of the country in which the judgment was rendered; and
- (f) The recognition and enforcement in Vietnam of a foreign court judgment is contrary to the basic principles of Vietnamese laws.

Note: The concept of ‘basic principles of Vietnamese laws’ is similar to the concept of ‘public policy’ of a Western country. This concept is not elaborated under law. Rather, Vietnamese courts interpret this concept on a case-by-case basis.

B. Costs and expenses

- i. What kind of cost and expenses can a claimant expect in this enforcement procedure?**

Answer: The claimant must pay court fees for the recognition and enforcement of his/her judgment in Vietnam. If he/she retains a lawyer then he/she must bear attorney’s fees as well. The court fees are detailed in Section III.D(1) below.

III. FORMAL REQUIREMENTS

A. Time limit

- i. Is there a time limit to apply for enforcement of a foreign court judgment?**

Answer: As noted in Section II.A(e) above, Vietnamese courts only recognize and enforce a foreign court judgment if such judgment is within the statutes of limitation for enforcement under the laws of the country where the judgment is rendered. In addition, according to Article 30.1 of the Law on Enforcement of Civil Judgments of 2008, once a foreign court judgment is recognized in Vietnam, the time limit for the claimant to enforce the recognized judgment is five years from the date on which such judgment is recognized.

B. Final and Definitive Court Judgment: Provisional Enforcement

- i. Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?**

Answer: Yes, it is. As noted in Section II.A(a) above, one of the grounds for Vietnamese courts to refuse the recognition and enforcement of a foreign court

judgment is that the underlying judgment is not final and definitive according to the laws of the country where such judgment is rendered.

C. Necessary Requirements

- i. What necessary requirements must the foreign court Judgment fulfill to be recognized and enforced?**

Answer: Please see our responses in sections I.C(1) and II.A above.

D. Other Formal Requirements: Court Fees

- i. Is it mandatory to pay Court Fees for this kind of application?**

Answer: Yes, it is.

The fee for recognition of a foreign court judgment is currently VND4,000,000 (approximately US\$200). The fee for the enforcement of a recognized foreign court judgment is 3% of the collected amounts from the enforcement but in all cases not exceeding VND200,000,000 (approximately US\$10,000).

- E. Are there any other formal requirements in your country to enforce a court judgment?**

Answer: The process for requesting the recognition and enforcement of a foreign court judgment must follow the procedures detailed in Section IV.D(1) below.

IV. PROCEDURE

A. Competent court

- i. Which Court or courts are competent to decide an enforcement application?**

Answer: According to Article 35 of the Civil Proceedings Code, the competent court of Vietnam for the recognition of a foreign court judgment is the provincial court where the losing party has its office or has assets. Once a foreign court judgment is recognized, the winning party/claimant may ask the competent judgment execution agency of Vietnam to enforce the judgment. The judgment execution agency of Vietnam is a governmental agency under the Ministry of Justice of Vietnam. The competent judgment execution agency for the enforcement of a foreign court judgment is the agency located at the province (or city) where the Vietnamese court recognized the judgment.

B. Informational Requirements for the Application to Enforce a Foreign Court Judgment

I. What information must be contained in the enforcement application of a foreign court judgment?

Answer: According to Article 350 of the Civil Proceedings Code, the application must contain the following information:

- (a) Name and address of the claimant;
- (b) Name and address of the party against whom the judgment enforcement is sought (i.e., the losing party); if such party does not have a principal office in Vietnam, the location of the assets and types of assets relating to the enforcement in Vietnam; and
- (c) The request(s) of the claimant.

Note: The application must be legalized, translated into Vietnamese, and notarized or certified in Vietnam.

C. What documents must be included with/attached to the application to enforce a foreign court judgment?

Answer: According to Article 351 of the Civil Proceedings Code, the following documents must be submitted together with the application: (i) a copy of the foreign court judgment; (ii) a document certifying that such judgment is final and definitive, the time limit for enforcement has not expired, and it is necessary to have it enforced in Vietnam (unless the foregoing items have been clearly specified in the judgment); (iii) a document certifying that a copy of the judgment was served to the person against whom the enforcement is sought; and (iv) in cases where the person against whom the enforcement is sought was absent at the trial conducted by the foreign court, a document certifying that such person was duly summoned.

Note: The documents mentioned from (ii) to (iv) above must be legalized, translated into Vietnamese, and notarized or certified in Vietnam.

D. Phases of the Procedure

I. What are the phases of the procedure to enforce a foreign court judgment?

Answer: The phases for the recognition and enforcement of a foreign court judgment are generally as follows:

- (a) The claimant must send the application and the documents mentioned in Section IV.C above to the Ministry of Justice of Vietnam. Together

with the submission of the application, the claimant must pay the fee for the recognition of the foreign court judgment;

- (b) Within seven calendar day from the date of payment of the fee for recognition by the claimant, the Ministry of Justice shall transfer the application to the competent court;
- (c) Within a period of four months from when it receives the application from the Ministry of Justice, the competent court shall decide to reject the application (on the basis of failing to identify the address or the assets of the losing party, etc.) or open the hearing of the application;
- (d) Within a period of one month from the date it decides to open the hearing of the application for the recognition and enforcement of a foreign court judgment, the court shall open the formal hearing to decide whether the judgment is recognized and enforced in Vietnam or not;
- (e) In cases where a foreign court judgment is recognized for enforcement in Vietnam, the claimant shall follow the judgment execution process as stipulated in the Law on Enforcement of Civil Judgments of 2008.

E. Opposition of the Defendant

1. Can a defendant oppose to this enforcement application?

Answer: No, he/she cannot. However, the defendant may appeal the decision of the court of Vietnam. Please refer to Section IV.F below for details.

2. Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?

Answer: Not applicable.

F. Appeal and its Consequences in this Procedure

1. Is it possible to appeal a court decision to recognize and enforce a foreign court decision?

Answer: Yes, it is.

Within fifteen calendar days from the date on which a Vietnamese court issues its decision on the recognition and enforcement of a foreign court judgment, the losing party/defendant may appeal this decision to the Supreme Court of Vietnam. Within two months from the date it receives the case files, the Supreme Court of Vietnam issues its decision on the appeal.

2. Can this appeal suspend the enforcement?

Answer: Yes, this can. The enforcement process will be pending until the Supreme Court of Vietnam renders its opinion on the appeal.

G. Recovery of judicial costs and expenses

1. Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?

Answer: No, there are not. The claimant must bear the court fees as described in Section III.D(1) above *plus* the attorney's fees (if any).

V. RECOVERY OF THE DEBT

A. Means of Enforcement

1. What types of assets are subject to enforcement of the court's judgment?

Answer: Any types of assets that can be transacted and under the ownership of the losing party are subject to enforcement in Vietnam. Thus, the assets may include real estate, machines, vehicles, money, valuable papers, intellectual property, etc. However, Vietnamese laws prohibit attaching assets that are considered basic needs of the defendant such as food, drugs, working tools, etc. The attachment of a house being the only house of the defendant can only be made if the defendant does not have any other type of assets (or if he/she does, such assets are below the value of the enforced obligations).

VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION

A. Any other issues of interest in your jurisdiction

Answer: Vietnam has only entered into judicial assistance agreements (which may include the mechanism for the recognition and enforcement of judgments of the contracting states) with about sixteen countries and territories. Most of these countries are former countries of the Soviet bloc. Thus, the only possibility for a court judgment from a member of the European Union such as the United Kingdom or Germany (except France since this country has entered into a judicial assistance agreement with Vietnam) or the United States to be recognized and enforced in Vietnam is on the reciprocal basis on which the Vietnamese courts have discretionary power. In fact, Vietnamese courts have recognized and enforced few foreign court judgments on this basis. However, the number of cases that are recognized and enforced in Vietnam is well below the number of applications that Vietnam is handling each year.

In addition, the process for the recognition and enforcement of a foreign court judgment in Vietnam is rather time-consuming. It always takes at least one year to complete.

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REACHING ACROSS BORDERS

INTERIM AND
PRECAUTIONARY MEASURES FOR THE
ENFORCEMENT OF FOREIGN
JUDGMENTS IN
VIETNAM

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I. APPLYING FOR INTERIM AND PRECAUTIONARY MEASURES

A. Is it possible to apply for an interim measure in order to assure the effective enforcement of a Court decision?

Answer: Yes, it is.

Pursuant to Article 99 of the Civil Proceedings Code of Vietnam of 2004 and its amendment in 2011 (collectively referred to as the “**Civil Proceedings Code**”), during settlement of a civil case, any concerned party such as the plaintiff or a related party (hereinafter referred to as the “**applicant**”) may request the court that is resolving the case to issue an order for the application of one or more interim and precautionary measures (hereinafter generally referred to as the “**interim measures**”).

According to Clause 1.2 of Resolution No. 02/2005/NQ-HDTP of the Council of Judges of the Supreme People’s Court of Vietnam dated April 27, 2005, providing guidelines for implementation of Chapter III – “Interim Preliminary Injunctive Relief Measures” of the Civil Proceedings Code (hereinafter referred to as “**Resolution 02**”), a court may issue an interim measure based on the following grounds: (i) to meet the urgent needs of the concerned party (otherwise, it will adversely affect the applicant); (ii) to protect the evidence; (iii) to preserve the *status quo* in order to avoid irrecoverable damage; and/or (iv) to ensure enforcement of the coming court judgment.

B. Is it mandatory to pay court fees for this type of application?

Answer: No, it is not.

A petition to apply for the interim measures is currently not subject to any court fees.

However, in certain circumstances (as described in Section II.A below), an applicant who requests the court to grant an interim measure(s) must deposit a sum of money or precious metals, gemstones or valuable papers as security for the applicant’s request. Under the law, the amount shall be fixed by the court and be equivalent to the disputed amount. However, as a matter of practice, where the disputed amount involves a large amount of money, the court normally requires the applicant to deposit an amount below the disputed money.

C. What is the ordinary/average length of time for this kind of procedure?

Answer: According to Article 117 of the Civil Proceedings Code and clauses 5 and 6 of Resolution 02, the judge who is in charge of resolving the case (where the case is settled by a single judge) or the council of judges (where the case is settled by a council of judges) issues the order of an interim measure(s) within the time-limit of:

- (a) Three [calendar] days from the date of acceptance of the application for the interim measure(s) and the deposit of the security (where applicable) in cases

where the application is filed after the competent court accepts the statement of claims; or

- (b) Forty-eight hours upon receipt of the application for the interim measure(s) and the deposit of the security (where applicable) in cases where the application and the statement of claims are filed at the same time.

However, in practice, Vietnamese courts do not always follow the timelines presented above. In fact, the grant of an interim measure(s) depends on the complexity of the case and the workload of the court.

II. TYPES OF INTERIM AND PRECAUTIONARY MEASURES

A. For which types of interim measures are the parties allowed to apply? (e.g., injunction, freezing orders, caveat, restraining order, etc.)

Answer: According to Article 102 of the Civil Proceedings Code, the applicant may apply to the court for issuing one or more of the following interim measures:

- (a) Assigning a minor to an individual or organization to look after, nurture, take care of, and educate such minor;
- (b) Forcing premature performance of part of the obligation to alimony support;
- (c) Forcing premature performance of the obligation to compensate for damages caused by harm to the life or health of the victim;
- (d) Forcing the employer to pay in advance salaries, wages, compensation or allowances for labor-related accidents or occupational diseases to its employees;
- (e) Temporarily suspending the implementation of a decision on dismissal of an employee;
- (f) Attaching the asset in dispute;*
- (g) Prohibiting any transfer of the asset in dispute;*
- (h) Prohibiting any change in the *status quo* of the asset in dispute;*
- (i) Permitting the harvest and sale of subsidiary food crops or of other products or commodities;
- (j) Freezing account(s) at banks, other credit institutions and the State Treasury; freezing assets at the place of bailment;*
- (k) Freezing the assets of the obligor;*

- (l) Prohibiting or forcing the defendant or a related party from conducting or to conduct certain acts; and/or
- (m) Other preliminary measures as stipulated by law.

Note: For circumstances marked with (*) above, the applicant is required to deposit his/her money or other valuable assets as security for the issuance of the interim measure(s).

III. PROCEDURE

A. Competent Court

- i. Which court has jurisdiction to grant these interim and precautionary measures?

Answer: The court to grant an interim measure is the court that has jurisdiction to accept the statement of claims of the plaintiff.

B. When can the application for interim and precautionary measures be submitted?

- i. Is it possible to apply for it at the time the underlying lawsuit is filed? If YES: Are there any special requirements when so doing?

Answer: Yes, it is.

According to Clause 2 of Resolution 02, the court may issue an interim measure(s) (at the time when the underlying lawsuit is filed) in cases where (i) there occur emergency events that require the court to act immediately; (ii) the evidence of the case is being destroyed or is threatened to be destroyed; or (iii) to avoid any grave consequences.

There are no special requirements for the request for an interim measure(s) in this circumstance. Rather, the procedures for the issuance of an interim measure(s) are mentioned in Section I.C(b) above, i.e., the applicant submits the application and the security (where necessary) to the court.

C. Is it possible to apply for interim precautionary measures before filing the underlying lawsuit? If YES: Are there any special requirements when so doing? (e.g., deadline to submit the lawsuit)

Answer: No, it is not.

This is not allowed under the Civil Proceedings Code.

- D. Is it possible to apply for interim precautionary measures after filing the main claim? If YES: Are there any special requirements when so doing?

Answer: Yes, it is.

There are no special requirements for the request for an interim measure(s) in this circumstance. Rather, the procedures for the issuance of an interim measure(s) are mentioned in Section I.C(a) above, i.e., the applicant submits the application and the security (where necessary) to the court.

- E. Criteria used by the court for granting these measures

- i. What requirements must be fulfilled in order to apply for an interim measure? (e.g., *periculum in mora*, *fumus boni iuris*, security, etc.)

Answer: Vietnamese courts only issue an interim measure(s) if they consider the application for such measure(s) meets one of the grounds mentioned in Section I.A above and upon the fulfillment of the security requirements (as mentioned in sections I.B and II.A above respectively).

- F. Procedure

- i. Which are the main steps of the procedure after filing the interim measure application? (e.g., holding a hearing, presenting evidence, etc.)

Answer: The main steps to grant the interim measures are generally as follows:

First, the judge verifies the application for the issuance of the interim measure(s) and supporting evidence. If the provided evidence is found insufficient, the judge shall require the applicant to provide further evidence.

Second, within three calendar days from the date of acceptance of the application for the issuance of an interim measure(s), if the judge thinks that it is appropriate for the issuance of the interim measure(s), he/she may consult with the party against whom the interim measures is sought, such as the defendant, for his/her opinion provided that such consultation does not adversely affect the application of the interim measure(s).

Third, upon the consultation (if any) and the provision of the security, within three calendar days, the judge must decide to issue the order for the interim measure(s) or not. In a case where the judge decides not to grant the interim measure(s), he/she must respond to the applicant in writing with reasons for his/her refusal.

An order for the interim measure(s) has an immediate effect. The judge must send a copy of the order to the applicant, the party to whom the interim

measures are applied, and related parties (if any) immediately after its issuance of the order.

2. **Is it possible for the Court to order an interim measure without hearing the other party? (*in audita parte debitoris*). If YES, under what circumstances can the parties apply for it?**

Answer: Yes, it is.

As mentioned in Sub-Section (1) above, Vietnamese courts have the sole discretion to hear the other party. Such hearing is subject to the conditions that they would help the court to issue an appropriate interim measure(s) and it does not adversely affect the application of the interim measure(s).

3. **What are the main steps of the procedure in this case?**

Answer: Please see our responses in Sub-Section (1) above.

G. Opposition of the defendant

1. **Is it possible for the defendant to oppose interim and precautionary measures?**

Answer: Yes, it is.

According to Article 124 of the Civil Proceedings Code, the defendant has the right to lodge a complaint against the applicable interim measures to the chief judge of the court where the case is settled. Such complaint must be filed within three working days from when the defendant receives the order of the interim measure(s).

Within the period of three working days from the date of receiving the complaint from the defendant, the chief judge must consider it and issue his/her decision on the merits of the complaint. The decision of the chief judge must be sent to the defendant immediately after he/she issues it. The decision of the chief judge is final and binding. The defendant is not allowed to appeal to a higher court.

2. **Is it possible for the defendant to ask the Court for the substitution of the interim measure for a guarantee?**

Answer: Yes, it is. However, it is subject to the acceptance of the applicant.

H. Appeal

1. **Are appeals allowed from the court decision ordering the measures or rejecting the defendant's opposition to them?**

Answer: No, they are not. Please see our responses in Section III.G(1) above.

2. **Is it possible to enforce the interim measure once an appeal is filed?**

Answer: An order for interim measure(s) of a Vietnamese court has an immediate effect. In other words, an order for an interim measure(s) is not appealable under Vietnamese law.

IV. EFFECTS AND VALIDITY OF INTERIM AND PRECAUTIONARY MEASURES

- A. Is it possible to enforce the interim measure when the other party obstructs it?**

Answer: Yes, it is. As mentioned in Section III.F(1) above, an order for an interim measure(s) issued by a Vietnamese court has an immediate effect upon its issuance.

- B. Is it possible to modify a previous interim measure?**

Answer: Yes, it is.

According to Article 121 of the Civil Proceedings Code, an interim measure(s) may be modified when such measure(s) is deemed no longer suitable and it is necessary to change or grant an additional measure(s). The procedures for modification of an interim measure(s) are generally described in Section III.F(1) above.

- C. When is it possible to raise an interim measure?**

Answer: According to Article 122 of the Civil Proceedings Code, the court shall immediately issue an order to revoke the granted interim measure(s) in one of the following circumstances:

- (a) The applicant requests such revocation;
- (b) The defendant has deposited his asset or has another person to provide security such as a guarantee to the applicant; or
- (c) The obligations of the defendant are terminated in accordance with the Civil Code of Vietnam of 2005.

- D. Are there any rules concerning the costs (e.g., lawyers' fees, etc.) related to the application?**

Answer: No, there are not.

The applicant does not have to pay any statutory cost in relation to its request for the issuance of an interim measure(s). This cost has been included in the court fees that the applicant must advance when he/she submits his/her statement of claims to the court.

Generally speaking, lawyer's fees for civil cases are at the mutual agreement between the concerned parties.

V. ARBITRATION

A. Is it possible to apply for an interim measure in order to assure the effective enforcement of an Arbitration Award in your country? If YES: what is the enforcement procedure?

Answer: Yes, it is.

Under Article 48 of Law no. 54/2010/QH12 on Arbitration of Vietnam (“**Law on Arbitration**”), the parties have the right to request the arbitration tribunal or a court to issue an order for an interim measure(s) for a dispute which is handled by a domestic arbitration center.

According to Article 53 of the Law on Arbitration, the general rules for the issuance of an order for an interim measure(s) are as follows:

- (a) the chief judge of the competent court (i.e., the provincial court(s) where the interim measure(s) are sought) shall, within three working days from the date of receipt of the application for the interim measures, assign a judge to consider the application;
- (b) The assigned judge shall, within three working days, consider the application and decide to grant an order for the interim measure(s) or not;
- (c) The conditions and procedures for the grant, modification, or revocation of the interim measure(s) follow the Civil Proceedings Code and are generally described in sections I.A, I.B, II.A, and III.F(1) above.

B. Are the arbitrators, entitled to order an interim measure?

Answer: Yes, they are.

VI. FOREIGN PROCEDURE & ARBITRATION

A. Is it possible to apply for an interim measure before your country Courts in order to assure the effective enforcement of a foreign Court Decision or Arbitration Award? If YES: how is this procedure executed?

Answer: No, it is not. The current laws of Vietnam do not provide for such mechanism.

VII. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION

A. Please state/provide any other issues of interest in your jurisdiction.

Answer: Although the provisions of the interim measures have made certain progress over the years in Vietnam, there remain several issues that the parties should pay attention to, such as a wide discretionary power to issue (or not) the order for an interim measure(s) by Vietnamese courts. In addition, the statutory timeframe for the issuance of an order for an interim measure(s) are not always honored by the courts. Finally, it is the difficulty in seeking compensation from the courts when they improperly issue (or not) an order for an interim measure(s). Vietnamese law provides a legal mechanism for such compensation. However, the practical application of the mechanism remains to be seen.