

# Enforcement of Foreign Judgments

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Interim and Precautionary Measures [Vietnam]

2020



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## I. APPLYING FOR INTERIM AND PRECAUTIONARY MEASURES

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

**Answer:** Yes.

Pursuant to Article 111 of the Civil Proceedings Code of Vietnam of 2015, 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.

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

**Answer:** No.

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.

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

**Answer:** According to Article 133 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

### 1. 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 114 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, a legally incapacitated person, or a person with limited cognition or behavior control to an individual or organization to look after, nurture, take care of, and educate such person;
- (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;
- (m) Prohibiting the obligor from leaving Vietnam;
- (n) Prohibiting contact with victims of domestic violence;
- (o) Suspending bid closing and activities related to bidding;
- (p) Arresting aircrafts or ships to ensure lawsuit settlement;\* and/or
- (q) 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

#### 1. Competent Court

##### a) 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.

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

##### a) 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.

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.

**3. 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.

This is not allowed under the Civil Proceedings Code.

**4. 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.

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.

**5. Criteria used by the court for granting these measures**

**a) 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).

**6. Procedure**

**a) 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.

**b) 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.

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).

**c) What are the main steps of the procedure in this case?**

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

## **7. Opposition of the defendant**

**a) Is it possible for the defendant to oppose interim and precautionary measures?**

**Answer:** Yes.

According to Article 140 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.

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

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

#### **8. Appeal**

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

**Answer:** No. Please see our responses in Section III.G(1) above.

**b) 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**

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

**Answer:** Yes. 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.

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

**Answer:** Yes.

According to Article 137 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.

### **3. When is it possible to raise an interim measure?**

**Answer:** According to Article 138 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;
- (c) The obligations of the defendant are terminated in accordance with the Civil Code of Vietnam;
- (d) The resolution of the case is terminated according to regulations in the Civil Code of Vietnam;
- (dd) The decision on application of provisional emergency measures is unreasonable based on to the provisions of the Civil Code of Vietnam;
- (e) The grounds for application of the provisional emergency measures no longer exist;
- (g) The case has been resolved with a judgment/decision of the court that has taken effect; or
- (h) The courts have returned the lawsuit petition as prescribed in the Civil Proceedings Code.

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

**Answer:** No.

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

**1. 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 arbitral 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 after being assigned, 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.

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

**Answer:** Yes, they are (pursuant to Article 49 of the Law on Arbitration).

**VI. FOREIGN PROCEDURE & ARBITRATION 1. 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

**1. 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.

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