

Enforcement of Foreign Judgments

Fundamental Principles [Vietnam]

2020



TABLE OF CONTENTS

	Page
I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)	1
A. Ability to Apply for Recognition and Enforcement of a Court Judgment.....	1
1. Is it possible to apply for enforcement of a foreign court judgment in your country?	1
B. Applicable Law: General Rules.....	1
1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?	1
C. Special Rules: European Union	1
1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?	1
2. Does the European Union have a special procedure to enforce court judgments coming its member states?	2
D. Average Duration of Enforcement Procedure	2
1. What is the average length of time for this kind of procedure?	2
II. DENIAL OF RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT JUDGMENT: REASONS	2
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?	2
B. Costs and expenses	3
1. What kind of cost and expenses can a claimant expect in this enforcement procedure?	3
III. FORMAL REQUIREMENTS.....	3
A. Time limit	3
1. Is there a time limit to apply for enforcement of a foreign court judgment?	3

B.	Final and Definitive Court Judgment: Provisional Enforcement	4
1.	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?	4
C.	Necessary Requirements.....	4
1.	What necessary requirements must the foreign court Judgment fulfill to be recognized and enforced?	4
D.	Other Formal Requirements: Court Fees.....	4
1.	Is it mandatory to pay Court Fees for this kind of application?	4
E.	Are there any other formal requirements in your country to enforce a court judgment?	4
IV.	PROCEDURE.....	4
A.	Competent court	4
1.	Which Court or courts are competent to decide an enforcement application?	4
B.	Informational Requirements for the Application to Enforce a Foreign Court Judgment	5
1.	What information must be contained in the enforcement application of a foreign court judgment?	5
C.	What documents must be included with/attached to the application to enforce a foreign court judgment?	5
D.	Phases of the Procedure	6
1.	What are the phases of the procedure to enforce a foreign court judgment?	6
E.	Opposition of the Defendant	6
1.	Can a defendant oppose to this enforcement application?	6
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?.....	6
F.	Appeal and its Consequences in this Procedure	7

- 1. Is it possible to appeal a court decision to recognize and enforce a foreign court decision? 7
- 2. Can this appeal suspend the enforcement? 7
- G. Recovery of judicial costs and expenses 7
 - 1. Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application? 7
- V. RECOVERY OF THE DEBT 7
 - A. Means of Enforcement 7
 - 1. What types of assets are subject to enforcement of the court's judgment? 7
- VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION 8
 - A. Any other issues of interest in your jurisdiction 8

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

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

Answer: Yes.

Pursuant to Article 425 of the Civil Proceedings Code of Vietnam of 2015 in effect since 1 July 2016 (hereby 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(1) below.

B. Applicable Law: General Rules

1. 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 its amendment in 2014;
- (c) The Law on Fees and Charges 2015; and
- (d) Decision No. 326/2016/UBTVQH14 on Court Fees.

C. Special Rules: European Union

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

Answer: Yes.

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); or

(b) Such judgment is recognized and enforced by Vietnamese courts on a reciprocal 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 four to 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 to two years.

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 439 of the Civil Proceedings Code, a foreign court judgment shall not be recognized and enforced in Vietnam in the following cases:

- (a) Such judgment does not satisfy one of conditions for being recognized provided in international treaties to which the Socialist Republic of Vietnam is a signatory;
- (b) Such judgment is not yet legally enforceable (i.e., final and definitive) in accordance with the laws of the country where it is rendered;
- (c) The person against whom the enforcement is sought (i.e. the losing party) or its lawful representative was absent from the trial held by the foreign court because he/she had not been duly summoned or the documents of the foreign court had not been delivered to such person in a reasonable time period as prescribed in the laws of the

country of such foreign court so that he/she could exercise his/her right to self-defense;

- (d) The foreign court that rendered the judgment does not have jurisdiction to handle the case as prescribed under Article 440 of the Civil Proceedings Code;
- (e) The case has been resolved by a Vietnamese or foreign court and has been already enforced in Vietnam;
- (f) The time limit for enforcement of the judgment has expired in accordance with the laws of the country in which the judgment was rendered;
- (g) The enforcement of the judgment has been canceled or terminated in the country where such judgment was rendered; and
- (h) 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

1. 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

1. 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

- 1. 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.

As noted in Section II.A(b) 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

- 1. 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

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

Answer: Yes.

The fee for recognition of a foreign court judgment is currently VND3,000,000 (approximately US\$130). The fee for the enforcement of a recognized foreign court judgment varies depending on the collected amounts from the enforcement.

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

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

Answer: According to Article 39 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

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

Answer: According to Article 433 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: An application in a foreign language must be legalized, translated into Vietnamese, and notarized or certified in Vietnam then attached thereto.

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

Answer: According to Article 434 of the Civil Proceedings Code, the following documents must be submitted together with the application: (i) a certified 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 above in foreign languages must be legalized, translated into Vietnamese, and notarized or certified in Vietnam then attached thereto.

D. Phases of the Procedure

1. 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 the receipt of 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. 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.

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 High Court of Vietnam. Within two months from the date it receives the case files, the High 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 High 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, a court judgment from a member of the European Union (except France, since this country has entered into a judicial assistance agreement with Vietnam) or the United States will be recognized and enforced in Vietnam on a reciprocal basis in which the Vietnamese courts have discretionary power, based on an international agreement to which Vietnam is a party. 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 or two years to complete.

Vietnam

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