

Chapter 80. Vietnam

80:1. Legislation

Under Vietnamese law, civil judgments issued by courts of certain foreign countries may be enforced in Vietnam. Before a judgment can be enforced, it must be recognized, and its enforcement in Vietnam must be permitted, by a decision of the competent People's Court.

The law governing the matter is the Civil Litigation Code of 25 November 2015 of the National Assembly, with effect from 1 July 2016. The Civil Litigation Code provides that only civil judgments of a foreign court can be enforced in Vietnam. The Civil Litigation Code indicates “foreign civil judgments” as “judgments and decisions on civil, marriage, family, business, commerce, and labor issues, decisions on property in a criminal sentence, and any other decisions of foreign courts which, according to Vietnamese laws, are civil judgments.”¹ Furthermore, decisions on personal identification, marriage and family issued by certain foreign state authorities may also be acceptable.²

80:2. Principles of recognition and enforcement of foreign judgments—Treaties

The recognition and enforcement of foreign judgments must meet various conditions as provided in the Civil Litigation Code. A Vietnamese court may consider enforcement of a foreign judgment in Vietnam if the judgment is from a country with which Vietnam has a bilateral treaty regarding enforcement of judgments or from a country which, together with Vietnam, is a signatory to an international treaty on the subject. Such treaties must provide that each party will recognize and enforce judgments of the other party.¹

At the time of writing, Vietnam had signed judicial aid treaties on civil, family, and criminal law with several countries, including:

1. Algeria;
2. Belarus;
3. Brunei;
4. Bulgaria;
5. Cambodia;
6. China;
7. Cuba;
8. Czech Republic;
9. France;
10. Hungary;
11. India;
12. Indonesia;
13. Kazakhstan;
14. Korea;
15. Laos;
16. Malaysia;

¹ Civil Litigation Code, article 423.1.

² Civil Litigation Code, article 423.2.

¹ Civil Litigation Code, article 423.1a.

17. Mongolia;
18. North Korea;
19. The Philippines;
20. Poland;
21. Russia;
22. Singapore;
23. Slovakia;
24. Spain;
25. Taiwan;
26. Ukraine; and
27. United Kingdom.

Such treaties meet the above requirement.

80:3. Principles of recognition and enforcement of foreign judgments—Recognition by regulation

Civil judgments of courts of countries not covered in the list above can be recognized by Vietnamese courts if Vietnamese regulations so provide.¹

Article 423 of the Civil Litigation Code stipulates that enforcement of foreign judgments from a country which has not signed a treaty on enforcement of judgments with Vietnam and foreign judgments from a country which has not signed to an international treaty with Vietnam may, nevertheless, still be possible.²

80:4. Procedures for recognition of foreign judgments

The Civil Litigation Code states that a demand for enforcement of foreign judgment must be made within three years from the date the judgment becomes effective.¹

To enforce a foreign judgment in Vietnam, the judgment holder (“the applicant”) must first obtain a decision on recognition and enforcement of the judgment from an appropriate Vietnamese court.

For this purpose, the applicant must submit a request to the Ministry of Justice of Vietnam or, directly, to the competent Vietnamese court,² together with documents required by the relevant treaty. If the treaty does not prescribe specific enclosures, the following documents must be filed:

1. A certified copy of the foreign judgment;
2. Certification that the foreign judgment has come into force and should be executed in Vietnam and that the time limit for execution has not expired, unless such information is indicated clearly in the foreign judgment;

¹ Civil Litigation Code, article 423.1c.

² Civil Litigation Code, article 423.1b.

¹ Civil Litigation Code, article 432.1.

² Civil Litigation Code, article 432.1.

3. Evidence that a copy of the foreign judgment has been delivered to the judgment debtor; and
4. Evidence that, if the judgment debtor did not attend the hearing or trial, the judgment debtor was properly summoned to, or informed of, such hearing or trial.³

The application and enclosures in a foreign language must be legalized by the appropriate Vietnamese Embassy and translated into Vietnamese, and the translation must be duly certified.⁴

Within five working days from receipt of an application, the Ministry will pass the file to the court authorized to deal with the proceedings.⁵ The authorized court may be the People's Court in either the province or the city where, in the following order⁶ of priority:

1. The judgment debtor, being an individual, resides or, in the case of a legal entity such as a company, its head office is located;⁷
2. The judgment debtor, being an individual, works; or
3. Assets relating to the enforcement are available.⁸

The court can ask the applicant for more information to complete the submitted application. Upon receiving a completed dossier, the authorized court is required to accept the case for hearing.⁹ First, there is a pre-hearing, which will take place within four months from the date of acceptance of the case. The time limit may be extended by a further two months.¹⁰ This extended period will apply if there is a demand from the court for any further explanation by the applicant or by the foreign court which made the foreign judgment concerning any unclear issues. During the pre-hearing period, the court may issue one of the following decisions:

1. Suspend the hearing if the applicant revoked the request for enforcement of the foreign judgment;
2. Suspend the hearing if the judgment debtor has voluntarily fulfilled his duties or has died but his rights and duties cannot be inherited;
3. Suspend the hearing and pass the file to another court if it is not within the competence of the court which handling the case;
4. Suspend the hearing if the court cannot find the address of the judgment debtor or the location of the property concerned;
5. Suspend the hearing if there is a stay of execution of the foreign judgment made from the country where the court issued such judgment is located; or
6. Conduct a hearing.¹¹

In the event the court decides to conduct a full hearing, such hearing must commence within one month from the date of the court's decision.¹²

³ Civil Litigation Code, article 434.1.

⁴ Civil Litigation Code, articles 433.2, 434.2, and 478.

⁵ Civil Litigation Code, article 435.

⁶ Civil Litigation Code, article 37.1b.

⁷ Civil Litigation Code, article 39.2d.

⁸ Civil Litigation Code, article 39.2d.

⁹ Civil Litigation Code, articles 436 and 363.

¹⁰ Civil Litigation Code, article 437.3.

¹¹ Civil Litigation Code, articles 437.3, 437.4, and 437.5.

¹² Civil Litigation Code, article 437.3.

While considering the request, the court may not consider the merits of the case, as that has been already dealt with by the foreign court. The court may only review the foreign judgment and the documents which have been submitted to ensure that they conform to the provisions of the Civil Litigation Code, other Vietnamese regulations, and the relevant treaty.¹³

The court may issue either a decision on recognition and enforcement of the foreign judgment in Vietnam or a decision on its non-recognition.¹⁴ The court may decide not to recognize the foreign judgment in the following cases:

1. The foreign judgment is not effective according to the law of the country where the foreign judgment was made;
2. The judgment debtor or his legal representative did not attend the trial or hearing before the foreign court because he was not legally summoned;
3. The case can only be adjudicated by a Vietnamese court;
4. The case also was considered by a Vietnamese court, and the judgment issued has become effective;
5. The case was settled by another foreign court whose judgment has already been recognized by the Vietnamese court;
6. Before the foreign court accepted the case (and gave its judgment), the case had already been accepted and considered by a Vietnamese court;
7. The time limit for enforcement of the foreign judgment has expired according to the law of the country where the foreign judgment was made or according to Vietnamese law; or
8. The recognition and enforcement of the foreign judgment in Vietnam is contrary to fundamental principles of Vietnamese law.¹⁵

The court's decision is final and binding, unless it is appealed to the People's Senior Court. The appeal can be made by either party or by the People's Prosecutor.¹⁶ The appeal must be made by the party within 15 days from the date of the court's decision. If the appeal is made by the prosecutor, the time limit is 7 or 10 days which applied alternately to the People's Prosecutor or to the People's Senior Prosecutor from the date they receive the decision.¹⁷ If the parties were not present at the hearing, the 15-day period starts to run from the date on which they received a copy of the court's decision.¹⁸

According to the Civil Litigation Code, the parties who were absent from the hearing are deemed to have received a copy of the court's decision by signing a certification of receipt upon delivery of the decision.¹⁹ If the court's decision cannot be delivered directly to the absent parties, it must be displayed at the office of the local People's Committee in the locale where the absent parties reside.²⁰

¹³ Civil Litigation Code, article 438.4.

¹⁴ Civil Litigation Code, article 438.5.

¹⁵ Civil Litigation Code, article 439.

¹⁶ Civil Litigation Code, articles 426 and 442.

¹⁷ Civil Litigation Code, article 442.

¹⁸ Civil Litigation Code, article 442.1.

¹⁹ Civil Litigation Code, articles 175, 177.2, and 178.1.

²⁰ Civil Litigation Code, articles 177.5 and 179.

Both of the applicant and the judgment debtor must be present at the hearing. The parties can attend the hearing by themselves, or via their representatives, or can ask the court to conduct the hearing without their presence.²¹

The appeal court has the right to uphold or to revise partly or wholly the decision of the first instance.²² The decision of the People's Senior Court on the appeal is final and binding.²³

80:5. Enforcement of a foreign judgment

The Civil Litigation Code states that a foreign judgment which has been recognized by a Vietnamese court and which the court allows to be enforced will take effect in Vietnam in the same way as a judgment of a Vietnamese court.¹

The enforcement of the judgment must follow the Law on Enforcement of Civil Judgments of 14 November 2008 (the “Law on Enforcement”) and the Law Number 64/2014/QH13 of 25 November 2014, on Amendment of, and Addition to, Law on Enforcement, with effect from 1 July 2015.²

According to the Law on Enforcement, once a decision on recognition comes into effect, the applicant must file the following documents with the Department of Enforcement to implement the court's decision:

1. A request for enforcement;
2. A copy of the court's decision;
3. A copy of the foreign judgment, with certified Vietnamese translation; and
4. Other relevant documents.³

Within five working days from receipt of the dossier and request for enforcement, the Chief of the Department must issue a decision and assign an enforcer to execute the foreign judgment against the judgment debtor. On receipt of the decision, the enforcer must notify the judgment debtor and give him a period of no more than 10 days to comply voluntarily. If the judgment debtor does not do so, the judgment will be enforced.⁴ If the judgment is enforced, the judgment debtor must bear all costs served for such enforcement.⁵

To prevent the judgment debtor from concealing or destroying his property, the enforcer has the right to promptly seize assets. Seized assets will be auctioned,⁶ especially in the event the parties fail to agree on the delivery of the assets.⁷

²¹ Civil Litigation Code, article 438.3.

²² Civil Litigation Code, article 443.3.

²³ Civil Litigation Code, article 443.4.

¹ Civil Litigation Code, article 427.1.

² Civil Litigation Code, article 427.1; Law on Enforcement, article 2.1d.

³ Law on Enforcement, article 31.2.

⁴ Law on Enforcement, article 46.1.

⁵ Law on Enforcement, article 73.1.

⁶ Law on Enforcement, article 101.1a.

⁷ Law on Enforcement, article 100.

To enforce a foreign judgment, an individual judgment holder or an organization has five years from the date the court's decision comes into force in which to enforce the judgment.⁸

Furthermore, article 429 of the Civil Litigation Code stipulates that the state must ensure the transfer abroad of monies and assets received from the enforcement of the foreign judgment. However, no regulation to implement article 429 has yet been introduced. Therefore, at present, there is no certainty that the state will assist in the transfer abroad of money and assets obtained as a result of enforcement of a foreign judgment.

80:6. Court fees, lawyers' costs, and interest

The terms “cost” and “fee” are defined by the Law on Costs and Fees of 25 November 2015 of the National Assembly, with effect from 1 January 2017. The Law on Costs and Fees states that:

‘Cost’ is an amount of money which an organization/individual must pay in respect of public services provided by a state authority or an authority delegated by the state.¹

‘Fee’ is a fixed amount of money which an organization/individual must pay in respect of public services, serving the state management tasks, provided by a state authority.²

Court fees are governed by Resolution Number 326/2016/UBTVQH14 of 30 December 2016 on rates of collection, exemption, reduction, collection, remittance, management and use of court costs and fees (the “Resolution on Court Costs and Fees”). According to the List of Court Costs and Fees issued together with the Resolution, the applicant must pay fees in the amount of VND 3 million when it submits a request to the Ministry or to the court.

The fee (called a filing fee) must be paid in full in a lump sum. A carbon copy of the fee collection receipt must be sent to the court, together with the dossier. The fee is not reimbursed to the applicant whether or not the court approves the request for recognition and enforcement.³

Regulations concerning litigation generally provide that the appellant must pay the appeal court costs which, in the case of a civil judgment appeal, are VND 300,000. If the appellant does not pay, the request for appeal will be withdrawn, unless the appellant is exempt.

The party who appeals against a decision regarding recognition must pay the appeal court fees in advance. The fees are VND 300,000. The fees will be reimbursed to the appellant if the appeal is successful.⁴

With regard to lawyer's costs, the Law on Lawyers of 29 June 2006, issued by the National Assembly, stipulates that a lawyer's remuneration may be agreed between a lawyer and his client. It is usually calculated on the basis of:

⁸ Law on Enforcement, article 30.1.

¹ Law on Costs and Fees, article 3.1.

² Law on Costs and Fees, article 3.2.

³ Resolution on Court Costs and Fees, article 37.1.

⁴ Resolution on Court Costs and Fees, articles 37.2 and 38.5.

1. The number of hours spent by the lawyer;
2. The pre-agreed remuneration for a specific case;
3. A percentage of the value of the lawsuit or contractual or project value; or
4. A long-term contract with fixed remuneration.⁵

In addition to remuneration, client and lawyer may reach agreement to pay travel costs, accommodation, and other reasonable expenses.⁶

In Vietnam, there is no requirement that the winning party's lawyer's costs should be paid by the losing party. Rather, the law provides that the cost of a lawyer will be borne by the party that hired the lawyer, unless the parties agree otherwise.⁷ Reference to lawyers' costs can be found in the Schedule of Arbitration Fees and Costs issued in connection with the Arbitration Rules of the Vietnam International Arbitration Center at the Chamber of Commerce and Industry of Vietnam. Pursuant to the Schedule, a lawyer's costs are referred to as “expenses”⁸ which each party must bear.⁹ Interest on a judgment debt is not regulated by Vietnamese law.

80:7. Conclusion

In brief, the legal system in Vietnam is in its formative stages. The incomplete system of law is further complicated because laws, ordinances, and other regulations are not self-contained.

Additional and implementing legal documents are often required. This is the case with the Civil Litigation Code. Thus, implementing provisions must still be promulgated.

⁵ Law on Lawyers, article 55.2.

⁶ Law on Lawyers, article 56.2.

⁷ Civil Litigation Code, article 168.3.

⁸ Schedule of Arbitration Fees and Costs, clause I3.

⁹ Schedule of Arbitration Fees and Costs, clause VII.