

RECOGNITION AND ENFORCEMENT OF FOREIGN COURT JUDGMENTS, DECISIONS, AND ARBITRAL AWARDS

The Evolution and Challenges of Arbitration in Vietnam

Commercial arbitration is a preferred method of dispute resolution outside the courts, chosen voluntarily by the parties involved. In Vietnam, the enactment of the Law on Commercial Arbitration in 2010 marked a significant development in arbitration law, following the country's earlier accession to the 1958 New York Convention on the recognition and enforcement of foreign arbitral awards. Arbitration has increasingly become a preferred method for resolving international commercial disputes, as reflected in global surveys and domestic trends.

However, despite its growing popularity, the enforcement of arbitral awards, including both domestic and foreign awards in Vietnam, faces considerable challenges. A notable concern is the high rate of arbitral awards being annulled or denied recognition by Vietnamese courts, leading to uncertainty and diminishing confidence in arbitration as a reliable dispute resolution mechanism. This issue not only affects the perception of arbitration but also poses risks to the business environment in Vietnam.

In this newsletter, we will explore the complexities surrounding the recognition and enforcement of foreign court judgments, decisions, and arbitral awards in Vietnam, shedding light on the legal framework, current challenges, and potential solutions to strengthen the efficacy and credibility of arbitration in the country.

Analyzing the Enforcement Data and Legal Hurdles

On September 25, 2020, the Ministry of Justice in Vietnam issued a comprehensive database aimed at tracking the recognition and enforcement of foreign court judgments and arbitral awards. This database covers decisions made by Vietnamese courts between 1 January 2012, and 30 September 2019, encompassing 26 foreign court judgments and 83 foreign arbitral awards. Notably, of the 26 court judgments, 7 involved commercial disputes, with 3 being denied recognition and enforcement. In the case of foreign arbitral awards, a significant 30 out of 83 applications faced denial.

For example, 8 cases were adjudicated at the Singapore International Arbitration Centre. Of these, 4 were denied recognition, 1 was suspended, and only 3 were successfully recognized and enforced.

The most common reasons for refusing recognition and enforcement include: (i) arbitrators issuing awards did not articulate appropriate reasons for the party being requested to enforce under the arbitration council's procedures (cited 27 times), (ii) those arbitral awards, if recognized, would conflict with basic principles of Vietnamese law (cited 10 times), and (iii) lack of jurisdiction for parties to agree to arbitration or failure to adhere to signing procedures (cited 6 times).

Navigating the Path Forward for Enforcement

Despite Vietnam's status as a signatory to the New York Convention, which generally supports the recognition and enforcement of foreign arbitral awards, enforcement in Vietnam remains challenging. Vietnamese courts often place the burden of proof on the party requesting enforcement, requiring them to provide substantial evidence. Moreover, even when such evidence is presented, Vietnamese courts tend to prioritize Vietnam's own procedural rules over the arbitration rules agreed upon by the parties involved. This approach creates uncertainty and inconsistency in the enforcement process.

One recurring issue is the interpretation of foreign entities' legal capacity. Vietnamese regulations stipulate that the civil and criminal capacity of foreign entities should be determined according to the law of their home country. However, in practice, Vietnamese courts often apply local law instead. This can lead to conflicts and complications, particularly when violations of Vietnamese regulations are interpreted as breaches of fundamental principles, further complicating the enforcement of foreign arbitral awards.

The data from the Ministry of Justice's database underscores the ongoing risks associated with the recognition and enforcement of foreign court judgments and arbitral awards in Vietnam. While Vietnam's participation in international conventions like the New York Convention suggests a commitment to upholding international standards, the practical application of these principles reveals significant challenges that parties must navigate to achieve successful enforcement.

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Conclusion

While Vietnam has made strides in aligning with international standards through its participation in conventions such as the New York Convention, the practical enforcement of foreign court judgments and arbitral awards remains fraught with challenges. The high rate of denial for recognition and enforcement highlights the ongoing complexities within the Vietnamese legal framework, particularly in terms of procedural adherence and the interpretation of fundamental legal principles.

For parties seeking to enforce foreign judgments or arbitral awards in Vietnam, it is crucial to navigate these legal nuances carefully. Understanding the potential hurdles, from procedural requirements to the application of local law, is essential for achieving a favorable outcome. As Vietnam continues to develop its legal infrastructure, there is hope that greater consistency and clarity will emerge, fostering a more predictable and reliable environment for the enforcement of international judgments and awards.

As we move forward, staying informed about the evolving legal landscape in Vietnam will be key for businesses and legal practitioners alike. The recognition and enforcement of foreign court judgments and arbitral awards will continue to play a critical role in Vietnam's integration into the global legal and business community, making it an area of significant importance for all stakeholders involved.