



## ▶ Vietnam Practice Team Newsletter

This newsletter edited by the Vietnam Practice Team at Atsumi & Sakai is delivered every other month. Our Vietnam Practice Team has achieved remarkable results through its partnership with A-PAC International Law Firm (APAC), a Vietnamese law firm with a track record of success in negotiations with government authorities. The Vietnam Practice Team strives to provide high-quality legal services in a wide variety of Vietnam-related business areas, including business expansion, M&A and corporate reorganizations, negotiations with government authorities, corporate legal affairs, litigation and arbitration, and withdrawal from Vietnam.



# Recognition and Enforcement of Foreign Judgments and Arbitration Awards in Vietnam

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## Introduction

When a dispute occurs relating to investment or business activities in Vietnam, or concerning a contract or transaction with a partner in Vietnam, the parties normally resolve the dispute as agreed in the relevant contract or agreement. Resolution of such disputes may include Vietnamese arbitration or courts, or foreign arbitration or courts.

Over the past few years, Vietnam has been improving the quality of its procedures for domestic dispute resolution methods through the establishment of commercial arbitration centers and setting up of a website making court judgments and decisions public.<sup>[1]</sup> However, because there remain concerns about judges' competence regarding specific sectors and the equity of judgments or decisions, parties tend to choose foreign courts or arbitrators as means to resolve cross-border disputes. However, obtaining a favorable judgment from a foreign court or award of a foreign arbitrator is not the end of the story, as in order for the judgment, decision or award to take effect and be enforced in Vietnam, the beneficiary must still follow further local procedures.

In this newsletter, we summarize the relevant regulations and provide an update on notable practical issues relating to the procedures for recognition and enforcement in Vietnam of judgments and decisions of foreign courts and foreign arbitration awards (hereinafter collectively referred to as "Foreign Judgments").



## Relevant Documents

### (1) International Treaties

Both Vietnam and Japan are signatories of the Convention on Recognition and Enforcement of Foreign Arbitral Awards, normally called the New York Convention.

Signatories of the New York Convention have a responsibility not to discriminate against foreign arbitral awards, and are obliged to ensure that foreign arbitral awards are recognized and enforceable in the same way as domestic arbitral awards.<sup>[2]</sup> However, according to Decision 453/QD-CTN dated July 28, 1995 issued by the President of Vietnam, Vietnam reserves the following issues when implementing the New York Convention:<sup>[3]</sup>

- The Convention shall apply solely to the recognition and grant of permission for enforcement in Vietnam of foreign arbitral awards pronounced in the territory of member countries of the Convention. In case of foreign arbitral awards pronounced in the territory of a country that has not signed or acceded to the Convention, the Convention shall apply in Vietnam on the principle of reciprocity.
- The Convention shall apply solely to disputes arising from commercial legal relations.
- All interpretation of the Convention before the competent Courts or authorities of Vietnam must comply with the provisions of the Constitution and laws of Vietnam.

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 [1] <https://congbobanan.toaan.gov.vn/>  
 [2] Article 3 of 1958 New York Convention  
 [3] Article 2 of Decision 453/QD-CTN

In addition, to date Vietnam has signed 17 treaties and agreements on bilateral legal assistance in civil law matters with other countries and territories, including 14 treaties concerning recognition and enforcement of Foreign Judgments.<sup>[4]</sup>

## (2) Domestic Laws

The recognition and enforcement in Vietnam of Foreign Judgments is provided for in Articles 423 to 463, Part 7 of the 2015 Civil Procedure Code (“Civil Procedure Code”)

In 2019, the Council of Judges of the Supreme People’s Court published two draft resolutions providing guidance for the procedures for recognition and granting permission for enforcement in Vietnam of Foreign Judgments, including details on reasons for rejection<sup>[5]</sup>, but to date neither resolution has been approved or promulgated.



## Conditions for Recognition and Grant of Permission for Enforcement

In principle, in order to be recognized and for enforcement to be permitted in Vietnam, Foreign Judgments must fall under one of the following cases (Article 423 and Article 424 of the Civil Procedure Code):

- Judgments and decisions of foreign courts on civil, marriage and family, business, commerce, and labor matters, and decisions concerning properties in criminal judgments and decisions, and awards of foreign arbitrators are specified in an international treaty to which such foreign country and Vietnam are parties;
- Recognition and grant of permission for enforcement of judgments and decisions of foreign courts on civil, marriage and family, business, commerce, and labor matters, and decisions concerning properties in criminal judgments and decisions, and awards of foreign arbitrators are reciprocal; or
- In cases of civil judgments and decisions of foreign courts other than those mentioned above, such judgments or decisions are stipulated as being recognized and permitted for enforcement in Vietnamese laws.

## Outline of Procedures to Request Recognition

The main issues regarding the timing, procedures and required documents for filing a petition for the recognition and grant of permission for enforcement in Vietnam of Foreign Judgments are summarized as follows:

### (1) Time limitation

The beneficiary, people with related legitimate rights and interests, or their duly authorized representative is entitled to make a petition for the recognition and grant of permission for enforcement in Vietnam of a Foreign Judgment within 3 years from the effective date of the Foreign Judgment (Article 432 and Article 451 of the Civil Procedure Code).

### (2) Petition dossier

The petition dossier requesting the recognition and grant of permission for enforcement of judgments and decisions of foreign courts must include the following main documents (Article 433 and Article 434 of the Civil Procedure Code):

- Petition;
- Original copy or certified copy of the decision or judgment issued by foreign court;
- Document of the competent authority of the foreign country certifying that such judgment or decision has legal effect, its time limitation for enforcement has not expired, and that such judgment or decision needs to be enforced in Vietnam;
- Document of the competent authority of the foreign country certifying the result of proper service of such judgment or decision to the debtor; and
- Document of the competent authority of foreign country certifying that the debtor or his/her duly authorized representative was duly summoned if the foreign court pronounced the judgment in his/her absence.

In the case of a request for recognition and grant of permission for an award made by a foreign arbitrator, the dossier is simpler, consisting of the following documents (Article 452 and Article 453 of the Civil Procedure Code):

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[4] <https://lanhsuviets.gov.vn/Lists/BaiViet/B%C3%A0i%20Ovi%E1%BA%Bft/DispForm.aspx?List=dc7c7d75%2D6a32%2D4215%2Dafeb%2D47d4bee70eee&lD=414>

[5] [http://vibonline.com.vn/du\\_thao/du-thao-nghi-quyet-huon-gan-dan-thu-tuc-cong-nhan-va-cho-thi-hanh-tai-viet-nam-doi-voi-phan-quyet-cua-trong-tai-nuoc-ngoai-va-ban-quyet-dinh-dan-su-cua-toa-nuoc-ngoai](http://vibonline.com.vn/du_thao/du-thao-nghi-quyet-huon-gan-dan-thu-tuc-cong-nhan-va-cho-thi-hanh-tai-viet-nam-doi-voi-phan-quyet-cua-trong-tai-nuoc-ngoai-va-ban-quyet-dinh-dan-su-cua-toa-nuoc-ngoai)

- Petition;
- Original copy or certified copy of the award of foreign arbitrators; and
- Original copy or certified copy of the arbitration agreement among the parties.



### (3) Competent authorities

The Ministry of Justice of Vietnam is the relevant authority to receive the petition dossier. The Ministry must send the petition dossier to the competent People's Court within 5 business days from receiving it (Article 435 and Article 454 of the Civil Procedure Code).

### (4) Acceptance of petition and preparation for consideration of petition

The competent People's Court will consider the petition after receiving the dossier from the Ministry of Justice; the procedure is as follows (Article 436, Article 437, Article 455 and Article 457 of the Civil Procedure Code):

- Within 3 business days of receiving the dossier from the Ministry of Justice, the chief judge of the competent People's Court assigns a judge to oversee the petition; then the competent People's Court sends a notification for fee payment to the beneficiary or their duly authorized representative;
- Within 5 business days of receiving the notification mentioned above, the beneficiary must pay the fee, and upon payment, the competent People's Court accepts the petition;
- Within 3 business days of accepting the petition, the competent People's Court sends notification of the acceptance to the beneficiary;
- Within 4 months (2 months in the case of awards of foreign arbitrators) from the date of acceptance, the competent People's Court issues one of the following decisions: (i) temporary suspension of the consideration of the petition, (ii) suspension of the consideration of the petition, or (iii) opening a session to consider the petition.
- If (iii) applies, 15 days prior to the opening of the session, the competent People's Court sends the dossier to the office of the competent People's Procurator.

### (5) Session

The session to consider the petition must be opened within 1 month (20 days in the case of awards of foreign arbitrators) from the date the decision to open the session was issued (Article 473.3 and Article 457.1 of the Civil Procedure Code). The council considering the petition consists of three judges, who must make a decision by majority (Article 438.1, Article 438.5, Article 458.1 and Article 458.5 of the Civil Procedure Code).

### (6) Circulation of Decisions

Upon consideration of the petition, the competent People's Court pronounces a decision recognizing and permitting enforcement in Vietnam, or a decision of non-recognition of the Foreign Judgment. Within 15 days of the date of the pronouncement, the court will circulate the decision to the parties or their duly authorized representatives, the Ministry of Justice, and the office of competent People's Procurator (Article 441.1 and Article 460.2 of the Civil Procedure Code).

## Practical Issues

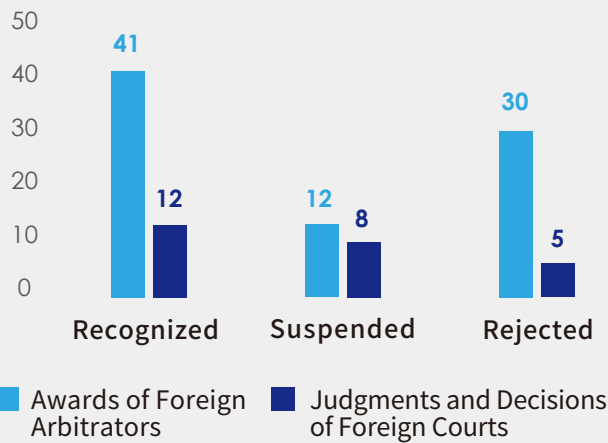
### (1) Analysis of the database of recognition and enforcement Foreign Judgments

On September 5, 2020, the Department of International Laws of the Ministry of Justice published on its website for the first time a database of the recognition and grant of permissions for enforcement in Vietnam of Foreign Judgments.<sup>[6]</sup> The database is fairly detailed and informative, and gives an indication about recognition and enforcement of Foreign Judgments in practice.

The database currently includes information for the period from January 1, 2012 through September 30, 2019. During this period, 108 recognition requests were accepted by the Ministry of Justice, comprising of 83 requests for the recognition and grant of permission for enforcement of awards of foreign arbitrators and 25 requests for the recognition and grant of permission for enforcement of judgments and decisions of foreign courts. The results of those requests are summarized in the following chart:

[6] <https://moj.gov.vn/tttp/Pages/dlcn-va-th-tai-Viet-Nam.aspx>

Numbers of Foreign Judgments Recognized and Enforced in Vietnam (January 2012-September 2019)



In percentage terms, only 49% of the requests were recognized and permitted to be enforced, while 32.4% were rejected and 18.6% suspended. The reasons for rejections are discussed in sub-section (2) below.

### (2) Reasons for rejection

Under the Civil Procedure Code, there are 8 cases where judgments and decisions of foreign courts may be rejected (Article 439), and 9 cases where awards of foreign arbitrators may be rejected (Article 459).

In the case of foreign arbitral awards, there are several reasons for rejection quoted, including, among others, (i) incompetence of the parties to the arbitration agreement, (ii) non-compliance with execution and notification procedures related to arbitration proceedings, and (iii) contravention of the basic principles of Vietnamese law.

### (3) Contravention of the basic principles of Vietnamese law

At present, the law is silent on the criteria for determining whether a Foreign Judgment is considered as being in “contravention of the basic principles of Vietnamese law”. However, in the draft resolution referred to in Section 2 above, the following reasons are specified:

- The recognition of such foreign arbitral award will infringe national sovereignty and security, social order and safety, social ethics, and community health;
- The foreign arbitral award was pronounced on the basis of coercion, deception, threat, or bribery;

- The foreign arbitral award has not recognized the voluntary agreement of the parties on how to settle the dispute.

Notably, being contrary to the basic principles of Vietnamese law is also a legal basis for the cancellation of awards pronounced by domestic Vietnamese arbitrators (Article 68.2.dd of the Law on Commercial Arbitration). As such, we may refer to the definition of “the contravention to the basic principles of Vietnamese laws” set forth under Resolution 01/2014/NQ-HDTP that provides guidance to this point.

In particular, according to Resolution 01/2014/NQ-HDTP, an arbitral award contrary to the basic principles of Vietnamese laws means an arbitral award violating the basic principles of conduct having an overall effect on the formulation and implementation of Vietnamese law (Article 14.2 of the Resolution). Based on the examples stipulated in Resolution 01/2014/NQ-HDTP, it seems that the basic principles of Vietnamese law are the basic principles specified in each specific law and applied to their respective fields, such as the basic principles of civil law (Article 3 of the Civil Code), the basic principles of commercial activities (Articles 10 through 15 of the Commercial Law), or the principles of settling disputes by arbitration (Article 4 of the Law on Commercial Arbitration).

However, in practice, “the basic principles” have been interpreted broadly, meaning that violation of any specific provision rather than general principles under the laws, so for example, violation of a provision relating to proxies under the Civil Procedures Code was judged to be contrary to the basic principles of Vietnamese law. Hence, it is notable that there are cases where the request for recognition of a Foreign Judgment may be rejected for less than satisfactory reasons.



## Conclusion

Despite the government’s recent efforts to increase transparency and efficiency, the recognition and grant of permission for enforcement in Vietnam of Foreign Judgments still requires time-consuming procedures, verification by a competent authority of the country of the decision or award, and a high rate of rejection. For these reasons, transactions and contracts with foreign connections still favor Vietnamese domestic arbitration, such as the Vietnam International Arbitration Center (VIAC) as the method of dispute resolution.

Therefore, when negotiating methods of dispute resolution for contracts with Vietnamese parties, foreign parties should anticipate the risks and disadvantages that they may encounter should they seek to use foreign courts or arbitrators for dispute resolution to protect their rights and interests and then seek enforcement in Vietnam.

## Author(s)

### Hanoi / Ho Chi Minh City



#### Yumiko Fujikawa\*

Associate  
Admitted Japan

[> View Profile](#)

Ms. Fujikawa has been seconded to APAC since March 2021 where she provides business support to Japanese companies in Vietnam.

E-mail: yumiko.fujikawa@aplaw.jp  
Mobile: +84-909-430-811

\* Not a Registered Foreign Attorney in Vietnam

### Tokyo



#### Yuri Suzuki

Partner  
Admitted Japan

[> View Profile](#)

Ms. Suzuki has extensive hands-on experience in investigation of legal systems, cross-border M&A, international financial transactions, outbound expansion, compliance and negotiations in international trade. More recently, Ms. Suzuki provides legal support to new businesses involved in IoT, big data and artificial intelligence, etc.



#### Yuko Nihonmatsu

Partner  
Admitted Japan

[> View Profile](#)

Ms. Nihonmatsu is mainly in charge of legal matters involving infrastructure building / projects and dispute resolution, etc. as a member of the Firm's Vietnam team.



#### Yasuharu Miura

Of Counsel  
Admitted Japan and  
Registered Foreign Attorney in Vietnam

[> View Profile](#)

Mr. Miura was seconded to APAC in Hanoi and Ho Chi Minh City from February 2017 to April 2021, where he advised on Japanese law on a wide range of matters including M & A, real estate, labor, and dispute resolution.



#### Natsuko Tomatsu

Associate  
Admitted Japan

[> View Profile](#)

Ms. Tomatsu was seconded to APAC (Ho Chi Minh) from August 2013 to July 2016, where she advised on various legal matters in a range of fields including cross-border transactions, M&A, general corporate law, corporate restructuring, and labor law cases. Ms. Tomatsu is now based in Tokyo where she leverages this experience advising Japanese companies seeking to expand into Vietnam.



#### Wataru Kamihigashi

Associate  
Admitted Japan

[> View Profile](#)

After teaching at Hanoi Law University, Mr. Kamihigashi was seconded to APAC's Hanoi office from March 2015 to March 2017, where he handled matters including M&A, real estate, labor, and dispute resolution. Using this experience, he is currently based in our Tokyo office supporting Japanese companies expanding into Vietnam.



#### Minh Chau Dang\*

Associate  
Admitted Vietnam

[> View Profile](#)

Ms. Dang has a wealth of experience related to the expansion of Japanese companies into Vietnam and the resolution of various related legal issues. She is currently working in our Tokyo office, using his Japanese language skills to support the operations of Japanese companies in Vietnam.

\*Not Registered as a Foreign Lawyer in Japan



#### Ciaran Rose\*

Associate  
Admitted Ireland (Barrister)

[> View Profile](#)

Mr. Rose has extensive experience of IP law (trademarks, patents, anti-counterfeiting), corporate law and distribution/franchising/ licensing matters from his time working in the Hanoi office of a global leading law firm. With Atsumi & Sakai, his major practice areas include cross-border corporate law, M&A, litigation and dispute resolution.

\*Not Registered as a Foreign Lawyer in Japan

## Contacts

E-mail: aandsvietnam@aplaw.jp

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*Please contact our PR staff to subscribe our newsletter.  
E-mail: [prcorestaff@aplaw.jp](mailto:prcorestaff@aplaw.jp)*



#### 1. ABOUT ATSUMI & SAKAI

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Atsumi & Sakai has established an office in London operating as Atsumi & Sakai Europe Limited (a company incorporated in England and Wales (No: 09389892); sole director Naoki Kanehisa, a lawyer admitted in Japan), and has established an office in New York operating as Atsumi & Sakai New York LLP (a limited liability partnership established in New York; managing partner Bonnie L. Dixon, a lawyer admitted in New York and a Registered Foreign Lawyer in Japan). We also have an office in Frankfurt operating as Atsumi Sakai Janssen Rechtsanwalts- und Steuerberatungsgesellschaft mbH, a German legal and tax advisory professional corporation (local managing director: Frank Becker, a lawyer admitted in the Federal Republic of Germany).

#### 2. LEGAL ADVICE

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