



FAQ ON INJUNCTION ORDERS FOR CIVIL DISPUTES: DFDL VIETNAM

JANUARY 2023

NO.	KEY QUESTIONS	ANSWERS
1.	<p>How is an injunction defined, and what are the different categories and characteristics of the available injunctions?</p>	<p>1. An injunction (or preliminary injunctive relief) is an interim measure during the process of resolution of a civil case imposed by a court pursuant to court proceedings or by an arbitral tribunal pursuant to arbitral proceedings. The injunction is petitioned to the court or the arbitral tribunal by a concerned party to provisionally satisfy the urgent demand of the concerned party, to protect his or her life, health, assets, to collect and protect evidence, to preserve the status quo to avoid irrecoverable loss and damage or to secure (obtain security for) resolution of the case or legal enforcement.¹</p> <p>2. Categories and characteristics of injunctions:</p> <p>(a) The Code of Civil Proceedings provides a list of 17 injunctions which can be roughly categorized as follows:</p> <ul style="list-style-type: none"> - Injunctions for preserving evidence: This type of measure is usually sought when there is a risk that the evidence, which a party wants to rely on, will be harmed, destroyed or lost. The purpose of such a measure is to protect and facilitate court proceedings. <i>E.g.: Attaching property in dispute, Prohibiting any change in the status quo of the property in dispute.</i> - Injunctions for prohibiting a party to the litigation from conducting or compelling another party to conduct certain acts: A prohibition is an order that restricts a party from starting or continuing an action that threatens another's legal rights or compels a party to perform an action. <i>E.g.: Prohibiting an obligor from exit from Vietnam.</i> - Injunctions for securing interim payments: interim payments intended to restore, prior to final judgement, a right whose existence is not seriously disputed. In fact, interim payment is not an interim measure per person as the court needs to consider whether the requesting party is entitled to a certain amount before making a final decision. As such, interim payment is rather a temporary remedy, which can be withdrawn or modified with the final judgement. <p>The payments might be paid in relation with: (i) Alimony obligations; (ii) Labor relations Salary; and (iii) Other general civil relations.</p>

¹ Article 111.1 of Code of Civil Procedure

NO.	KEY QUESTIONS	ANSWERS
		<p><i>E.g.: Compelling an employer to pay in advance salaries, health insurance proceeds, social insurance proceeds.</i></p> <ul style="list-style-type: none"> - Injunctions of assigning individuals or organizations to look after, nurture, take care of and educate minors, persons losing the capacity for civil acts or persons having difficulty in perceiving or controlling their own acts. <p>(b) The Law on Commercial Arbitration provides a list of six injunctions which can be roughly categorized as follows:</p> <ul style="list-style-type: none"> - Injunctions for preserving evidence. - Injunctions for prohibiting a party to the litigation from conducting or compelling another party to conduct certain acts. - Injunctions for securing interim payments. <p>Category of injunctions, and the characteristic of each categories in arbitration is quite similar to those in court. However, it can be seen that the types of injunctions granted by the arbitral tribunal is more limited than by the court, as they are designed to resolve commercial dispute only, while disputes in court might be related to labour, alimentation, etc.</p>
2.	<p>Under what circumstances may a party apply for an injunction? Please factor in all types of injunctions and, if necessary, sub-divide the responses by the form of the injunction.</p>	<p>1. Under the Code of Civil Proceedings, a concerned party may apply for an injunction to a competent court in the following circumstances²:</p> <ul style="list-style-type: none"> - To temporarily satisfy an urgent demand of such concerned party; - To protect such concerned party's life, health, assets; - To collect and/or protect evidence; - To preserve the status quo in order to avoid irrecoverable loss and damage or to secure (obtain security for) resolution of the case or legal enforcement; and - To immediately protect evidence or to prevent potentially serious consequences in an emergency. <p>Of note: The Judge may also on its own issue a decision applying an injunction of some (but not all) types in case where no concerned party applies for an injunction³. In specific, the Court may only on its own apply the injunctions of interim</p>

² Article 111.1 of Code of Civil Procedure

NO.	KEY QUESTIONS	ANSWERS									
		<p>payments, related to labor and alimony obligations. Other measures, such as freezing the assets in dispute, are not allowed unless requested by the concerned parties.</p> <p>2. In case a party to arbitral proceedings choses to apply to an arbitral tribunal for an injunction, the Law on Commercial Arbitration is silent on the circumstances in which such application may be made. However, upon a reasonable interpretation of Article 48.1 of the Law on Commercial Arbitration, such party may refer to the same circumstances under the Code of Civil Proceedings. In case a party to arbitral proceedings choses to apply to a court for an injunction, based on Article 53.1 of the Law on Commercial Arbitration, such party may do so in the circumstance where its lawful rights and interests are infringed or threatened to be directly infringed.</p> <p>3. Description of injunctions:</p> <p>(a) Injunctions under court proceedings</p> <table border="1" data-bbox="622 740 2051 1311"> <thead> <tr> <th data-bbox="622 740 721 794">No.</th> <th data-bbox="721 740 1077 794">Type of injunction</th> <th data-bbox="1077 740 2051 794">Description</th> </tr> </thead> <tbody> <tr> <td data-bbox="622 794 721 1152">1</td> <td data-bbox="721 794 1077 1152">Assigning individuals or organizations to look after, nurture, take care of and educate minors, persons losing the capacity for civil acts or persons having difficulty in perceiving or controlling their own acts</td> <td data-bbox="1077 794 2051 1152">An individual or organization shall be assigned to look after, nurture, take care of and educate if resolution of the case relates to such person who a minor, person losing the capacity for civil acts or person having difficulty in perceiving or controlling his or her own acts and if such person does not have any guardian.</td> </tr> <tr> <td data-bbox="622 1152 721 1311">2</td> <td data-bbox="721 1152 1077 1311">Compelling performance in advance of part of the obligation to supportt</td> <td data-bbox="1077 1152 2051 1311">The performance in advance of part of the obligation to support shall be compelled if resolution of the case relates to a claim for support and such claim is considered well-grounded and the failure to immediately perform in advance part of the obligation to support will affect the health and/or life of</td> </tr> </tbody> </table>	No.	Type of injunction	Description	1	Assigning individuals or organizations to look after, nurture, take care of and educate minors, persons losing the capacity for civil acts or persons having difficulty in perceiving or controlling their own acts	An individual or organization shall be assigned to look after, nurture, take care of and educate if resolution of the case relates to such person who a minor, person losing the capacity for civil acts or person having difficulty in perceiving or controlling his or her own acts and if such person does not have any guardian.	2	Compelling performance in advance of part of the obligation to supportt	The performance in advance of part of the obligation to support shall be compelled if resolution of the case relates to a claim for support and such claim is considered well-grounded and the failure to immediately perform in advance part of the obligation to support will affect the health and/or life of
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³ Article 111.3 of Code of Civil Procedure

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			<p>termination of a labour contract or a decision dismissing an employee</p> <p>dismissal of the employee in cases where the employer is not permitted to unilaterally terminate the labour contract or to discipline the employee by dismissal as stipulated by the law.</p>
		6	<p>Attaching property in dispute</p> <p>The attached property may be kept and preserved at the agency for civil judgement enforcement or delivered based on the prepared record to a concerned party or third person for management up until the time when a decision of the Court is issued</p>
		7	<p>Prohibiting transfers of property rights with respect to property in dispute</p> <p>Any transfer of property rights with respect to property in dispute shall be prohibited if during resolution of the case there is a ground demonstrating that the possessor or the holder of the property in dispute is conducting the act of transferring the property rights with respect to the property in dispute to another person</p>
		8	<p>Prohibiting changes in the status quo of property in dispute</p> <p>Any change in the status quo of property in dispute shall be prohibited if during resolution of the case there is a ground demonstrating that the possessor or holder of the property in dispute is conducting the act of dismantling, installing, constructing additional items or other acts for the purpose of changing the status quo of such property.</p>
		9	<p>Permitting the harvest and sale of subsidiary food crops or other products or commodities</p> <p>The harvest and sale of subsidiary food crops or other products and commodities may be permitted if during resolution of the case the property in dispute or property relevant to the dispute is subsidiary food crops or other products or commodities which within the period of harvest or cannot be preserved for a long time.</p>
		10	<p>Freezing accounts at banks, other credit institutions and the State</p> <p>Accounts at banks, other credit institutions and the State Treasury shall be frozen if during resolution of the case there is a ground demonstrating that the obligor has accounts at banks, other credit institutions or the State Treasury</p>

NO.	KEY QUESTIONS	ANSWERS	
			<p>Treasury</p> <p>and the application of this measure is necessary to secure resolution of the case or legal enforcement</p>
		11	<p>Freezing property at places of bailment</p> <p>Property shall be frozen at the place of bailment if during resolution of the case there is a ground demonstrating that the obligor has the bailed property, and the application of this measure is necessary to secure resolution of the case or legal enforcement</p>
		12	<p>Freezing property of obligors</p> <p>Property of an obligor shall be frozen if during resolution of the case there is a ground demonstrating that the obligor has the property and the application of this measure is necessary to secure resolution of the case or legal enforcement</p>
		13	<p>Prohibiting or compelling performance of certain acts</p> <p>The performance of certain acts shall be prohibited or compelled if during resolution of the case there is a ground demonstrating that a concerned party or other agencies, organizations or individuals are carrying out or are failing to carry out one or certain acts affecting resolution of the case and lawful rights and interests of other related persons in the case which is being resolved by the Court.</p>
		14	<p>Prohibiting an obligor from exiting from Vietnam</p> <p>An obligor shall be prohibited from exiting from Vietnam if there is a ground demonstrating that resolution of the case relates to his or her obligations to the State or to other entities and his or her exit from Vietnam affects resolution of the case, the interests of the State or lawful rights and interests of other entities or for the purpose of securing legal enforcement</p>
		15	<p>Prohibiting contact with a victim of family violence</p> <p>A person conducting an act of family violence shall be prohibited from contacting the victim of the family violence if such measure is necessary to protect the life, health or honor of such victim pursuant to the Law on Family Violence Fighting and Prevention</p>

NO.	KEY QUESTIONS	ANSWERS
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16	Temporarily suspending tender closing and tendering-related activities	The tender closing or approval of a shortlist or results of selection of contractor or investor, signing or implementation of a contract shall be suspended if during resolution of the case it is demonstrated that this measure is necessary to ensure resolution of the case in accordance with the law.
17	Arresting an aircraft or a seagoing ship to secure resolution of the case	The Court shall make a decision granting preliminary injunctive relief being temporary arrest of an aircraft or a seagoing ship to secure resolution of the civil case in which the aircraft owner, the creditor in cases where such aircraft is the security property, person who suffered loss and damage caused by the aircraft in flight or a person with rights and interests related to the aircraft initiates a legal proceeding in accordance with the law on civil aviation of Vietnam
18	Other injunctions	Other injunctions prescribed by other laws.

(b) Injunctions under arbitral proceedings

No.	Type of injunction	Description
1	Prohibiting changes in the status quo of property in dispute	Any change in the status quo of property in dispute shall be prohibited if during resolution of the case there is a ground demonstrating that the possessor or holder of the property in dispute is conducting the act of dismantling, installing, constructing additional items or other acts for the purpose of changing the status quo of such property.
2	Prohibit or compel any disputing party to engage in certain acts or practices to prevent acts from	During the arbitration process to resolve a dispute, if it is found that a party is engaged in an act (action or inaction) that will have an adverse effect on the proceedings, the other party may the right to request the arbitral tribunal to apply measures to prohibit or compel the disputing party to perform certain

NO.	KEY QUESTIONS	ANSWERS	
			<p>adversely affecting the arbitration proceedings.</p> <p>acts</p>
		<p>3</p>	<p><i>Attaching property in dispute</i></p> <p><i>The attached property may be kept and preserved at the agency for civil judgement enforcement or delivered based on the prepared record to a concerned party or third person for management up until the time when a decision of the Court is issued</i></p>
		<p>4</p>	<p>Request to preserve, store, sell or dispose of any property of one or the disputing parties</p> <p>There are properties in dispute or related to the dispute, which, if not handled promptly, will damage, lose value, reduce value or deform the property, at the request of one of the disputing parties Dispute, the Arbitral Tribunal will apply this measure when the involved parties have presented documents and evidence proving the need to apply this urgent measure.</p>
		<p>5</p>	<p>Temporary request for payment between parties</p> <p>To promptly handle the urgent needs of the involved parties, at the request of one of the disputing parties, the arbitral tribunal may apply an interim measure of payment between the disputing parties when the requesting party has demonstrated that the request for such measure is genuine. worthy, necessary.</p>
		<p>6</p>	<p>Prohibit the transfer of property rights to the disputed property</p> <p>Any transfer of property rights to the disputed property will be prohibited if there is a ground proving that disputing party may sell, transfer, lease, donate, etc. the disputed property may threaten to cause damage to other parties or cause difficulties in dispute settlement.</p>

NO.	KEY QUESTIONS	ANSWERS
3.	<p>At which stage of a proceeding may petition for injunction be filed, and can an injunction be an independent proceeding without the need to file a suit as sine qua non?</p>	<ol style="list-style-type: none"> 1. In court proceedings, injunction may be filed either: <ul style="list-style-type: none"> - During resolution of a case; or - At the same time of filing a petition, if it is necessary to immediately protect evidence or to prevent potentially serious consequences. 2. In arbitral proceedings, injunction may be filed to: <ul style="list-style-type: none"> - The arbitral tribunal after its establishment, or - To a competent court after the claimant lodges a statement of claim. 3. In line with items 1 and 2 above, an injunction cannot be an independent proceeding without firstly filing a suit as sine qua non.
4.	<p>What objective indicators are needed to understand my eligibility for an injunction?</p>	<p>Concurrently with the filing of a lawsuit petition, the following conditions are objective indicators to consider individuals, agencies and organizations eligibility for an injunction⁴:</p> <ul style="list-style-type: none"> - Capacity of the party: The party submitting the injunction application must be a concerned party to court proceedings (i.e., a plaintiff, a defendant, or a person with related rights, interests or obligations) or a disputing party to arbitral proceedings (i.e., a claimant or a respondent), as the case may be: - Circumstance to apply for an injunction: there must be a circumstance provided by law for the injunction application, as mentioned above. - Time to apply for an injunction: The injunction application must be filed together or after the filing of a suit, or after the establishment of the arbitral tribunal, as mentioned above.
5.	<p>What is the procedure for initiating an injunctive proceeding?</p>	<ol style="list-style-type: none"> 1. The procedure for initiating an injunctive proceeding at court is as follows⁵: <ul style="list-style-type: none"> - The applicant submits the application for granting of injunctive measure to the competent Court.

⁴ Article 3.1, Resolution 02/2020/NQ-HDTP

⁵ Article 133 of Code of Civil Procedure

NO.	KEY QUESTIONS	ANSWERS
		<ul style="list-style-type: none"> - Compulsory provision of security This provision is applied in case parties applied for injunctions No. 6, 7, 8, 10, 11, 15 and 16. Accordingly, the applicant must submit to the Court a letter of guarantee which is made with assets of a bank or other credit institution or other entities or deposit a sum of money, precious metals, gemstones or valuable papers which are fixed by the Court, but such deposit must be equivalent to the loss and damage which may arise as the consequence of the application of improper injunction. In case of injunctive petition is submitted during resolution of a case, the security obligation must be fulfilled within the time-limit fixed by the Court. In case the application is submitted at the same time of filing a petition, the time-limit shall not exceed 48 hours from the time of submission of the application. - The Court considers the application for injunctive measure and enclosed evidence. - After consideration, the Court will decide whether to apply provisional emergency measures or not. <p>Of note⁶:</p> <ul style="list-style-type: none"> - If the application is made before the opening of the trial session the Judge assigned to resolve the case shall consider the application within 03 working days from the day the applications are received. - If the application is submitted at trial, the trial panels shall consider such a petition at the time of adjudication. - If the application is made at the same time as of the petition filing, the presiding judge shall assign one judge to accept jurisdiction and issue a decision granting injunctive measure/ notify the applicant if the application is refused within 48 hours. <p>2. The procedure for initiating an injunctive proceeding at arbitration is as follows⁷: The consideration and procedure for initiating an injunctive measure, whether at the Court or at the Arbitral Tribunal are like those of court proceeding explained above. However, with the injunction submitted at the Arbitral Tribunal, at the submission of the petition, the applicant must provide the evidence, and deposit a sum of money, precious metal, gemstone equivalent to the amount of the loss which could be caused by improper application of interim reliefs.</p>

⁶ Article 10, Resolution 02/2020/NQ-HDTP

⁷ Article 50.1, Article 50.2 of the Law on Commercial Arbitration

NO.	KEY QUESTIONS	ANSWERS
		<p>Of note⁸:</p> <p>Within 03 working days from the date of receipt of the application, immediately after the requesting party has applied the security measures, the arbitration council shall consider and issue a decision to apply urgent measures. temporary. In case of refusal to accept the request, the arbitral tribunal shall notify in writing and clearly state the reasons therefor to the requesting party.</p>
6.	<p>What would be an appropriate forum in your jurisdiction to present a petition for the granting of injunctions?</p>	<p>A concerned party to court proceedings may present a petition for the granting of injunctions to a competent court of Vietnam. A party to arbitral proceedings may present a petition for the granting of injunctions to the relevant arbitral tribunal or a competent court of Vietnam, unless otherwise agreed by the parties.</p>
7.	<p>How much does the judge's discretion influence allowing or disallowing a grant of injunction?</p>	<p>In Vietnam, the grant of injunctions is within the sole discretion of the judge, noting that</p> <p>(a) The judge's decision on granting or not granting injunctions may be challenged by the concerned parties or the procuracy; and</p> <p>(b) The court must pay indemnity pursuant to the law in case its decision was improper which caused damage.</p> <p>The similar rules apply to the grant of injunction by the arbitral tribunal, noting however that there is no procedure for challenging a decision of the arbitral tribunal on granting or not granting injunctions.</p>
8.	<p>How are injunctions enforced, and what are the consequences for not complying with an injunction order?</p>	<p>1. Procedure of enforcing injunctions in Court:</p> <ul style="list-style-type: none"> - After the issuance of a decision to apply injunctive relief, the Court must immediately transfer such decision to the competent civil judgment enforcement agency.⁹ - Within 24 hours after receiving decisions on application of provisional urgent measures transferred by courts or handed directly by involved parties, heads of civil judgment enforcement agencies shall issue judgment enforcement decisions and assign enforcers to organize the enforcement.¹⁰

⁸ Article 50.4, Article 50.2 of the Law on Commercial Arbitration

⁹ Article 1.11 of the Law on Civil Judgment Execution Amended 2014

¹⁰ Article 36.1(e) of the Law on Civil Judgment Execution 2008

NO.	KEY QUESTIONS	ANSWERS
		<ul style="list-style-type: none"> - Within 24 hours after receiving judgment enforcement decisions, enforcers shall apply without delay the issued injunctions.¹¹ 2. Procedure of enforcing injunctions in Arbitration: The enforcement of the arbitral tribunal's decision to apply injunction shall comply with the provisions of the law on civil judgment enforcement of the Court's decision to apply injunction.¹² The procedure and the consequences for non-compliance are similar to the above. 3. For intentionally failing to enforce a court ruling on application of injunctive reliefs, besides being compelled to restore to original state and enforce the injunctions, the violators will be subject to administrative fines from VND 10,000,000 – VND 20,000,000 (Approx. USD 400 - USD 800).¹³ The violators might commit crime of failure to serve a judgment. As such, the violater will be subjected to a penalty of 03 - 24 months' imprisonment, and a fine of VND 5,000,000 to VND 50,000,000 (Approx. USD 200 – USD 2000).¹⁴
9.	<p>What processes can be followed to assail an unsatisfactory injunction order? Is there a statute of limitations to take up such a process?</p>	<ol style="list-style-type: none"> 1. Complaint process <ul style="list-style-type: none"> (c) A concerned party to court proceedings or a disputing party to arbitral proceedings choosing to apply to a court for an injunction may make a complaint against an unsatisfactory injunction decision of the court within 3 working days upon receipt of such decision. (d) Before a trial is opened, the Chief Judge of the court will resolve the complaint within 3 working days upon receipt of such complaint. During a trial, the council of adjudicators will resolve the complaint. The decision of the Chief Judge or the council of adjudicators on the complaint resolution shall be final. (e) It is noticeable that there is no process for making a complaint against an unsatisfactory injunction decision of the arbitral tribunal.

¹¹ Article 130.1 of the Law on Civil Judgment Execution 2008

¹² Article 26 of Decree 63/2011/ND-CP

¹³ Article 64 Decree 82/2020/ND-CP

¹⁴ Article 380 of the Criminal Code

NO.	KEY QUESTIONS	ANSWERS
		<p>2. Indemnification process</p> <p>(a) A party suffered damage resulted from an unsatisfactory application by another party for granting injunction (whether pursuant to court proceedings or arbitral proceedings) may file a suit against such other party to a competent court for claiming indemnity. The claim will follow the general process under the Code of Civil Proceedings. Under the Civil Code, the statute of limitation for making such claim is 3 years from the date the claiming party becomes or is supposed to be aware that his/her lawful rights and interests were infringed, i.e., the date he/she becomes or is supposed to be aware of his/her relevant damage.</p> <p>(b) A party suffered damage resulted from an unsatisfactory injunction decision issued by an arbitral tribunal may file a suit against such arbitral tribunal to a competent court for claiming indemnity, in accordance with the same rules as in (a) above. The law is silent on whether the members of the arbitral tribunal shall be severally or jointly be liable for the indemnity, and this matter remains untested in practice.</p> <p>(c) A party suffered damage resulted from an unsatisfactory injunction decision issued by a court may follow some processes under the Law on Indemnification Liability of the State to claim indemnity, notably he/she may file a claim for indemnity directly to the court making the unsatisfactory injunction decision or file a suit against such court to a competent court (typically the court where he/she resides) for claiming indemnity. Under the Law on Indemnification Liability of the State, the statute of limitation for making a claim in either of the above cases is 3 years from the date the claiming party receives a document constituting the ground for making such claim (for example, the decision issued by the Chief Judge on complaint resolution in favor of him/her under the complaint process above).</p>
10.	<p>Is injunctive relief by the courts in private arbitration available in your jurisdiction?</p>	<p>Yes. As mentioned above, pursuant to the Law on Commercial Arbitration, a disputing party to arbitral proceedings may apply to the relevant arbitral tribunal or a competent court for granting injunctions, unless otherwise agreed by the parties.</p>

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