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— Vietnam's Premier Business Litigation Firm —

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Winner of
Dispute Resolution Law Firm
of the Year in Vietnam



Winner of
Dispute Star of the Year
for Stephen Le Hoang Chuong

Finalist of

- **National Law Firm of the Year - Vietnam**
- **Dispute Boutique of the Year**
(sole representative of Vietnam in the list)



Finalist of

- **Vietnam Law Firm of the Year**
- **Regional Litigation Law Firm of the Year**
- **Dispute Resolution Boutique Law Firm of the Year**
- **Rising Law Firm of the Year**
- **Regional Managing Partner of the Year**
(for **Stephen Le Hoang Chuong**)

LE & TRAN

— Vietnam's Premier Business Litigation Firm —



JUDGE MENT ENFORCEMENT in Vietnam

SPEAKER:

Stephen Le

Le & Tran

Senior Litigator

DATE:

29/11/2017

8:30 am - 11:00 am

PLACE:

Park Hyatt Saigon

2 Lam Son Square,

Dist.1, Ho Chi Minh City.

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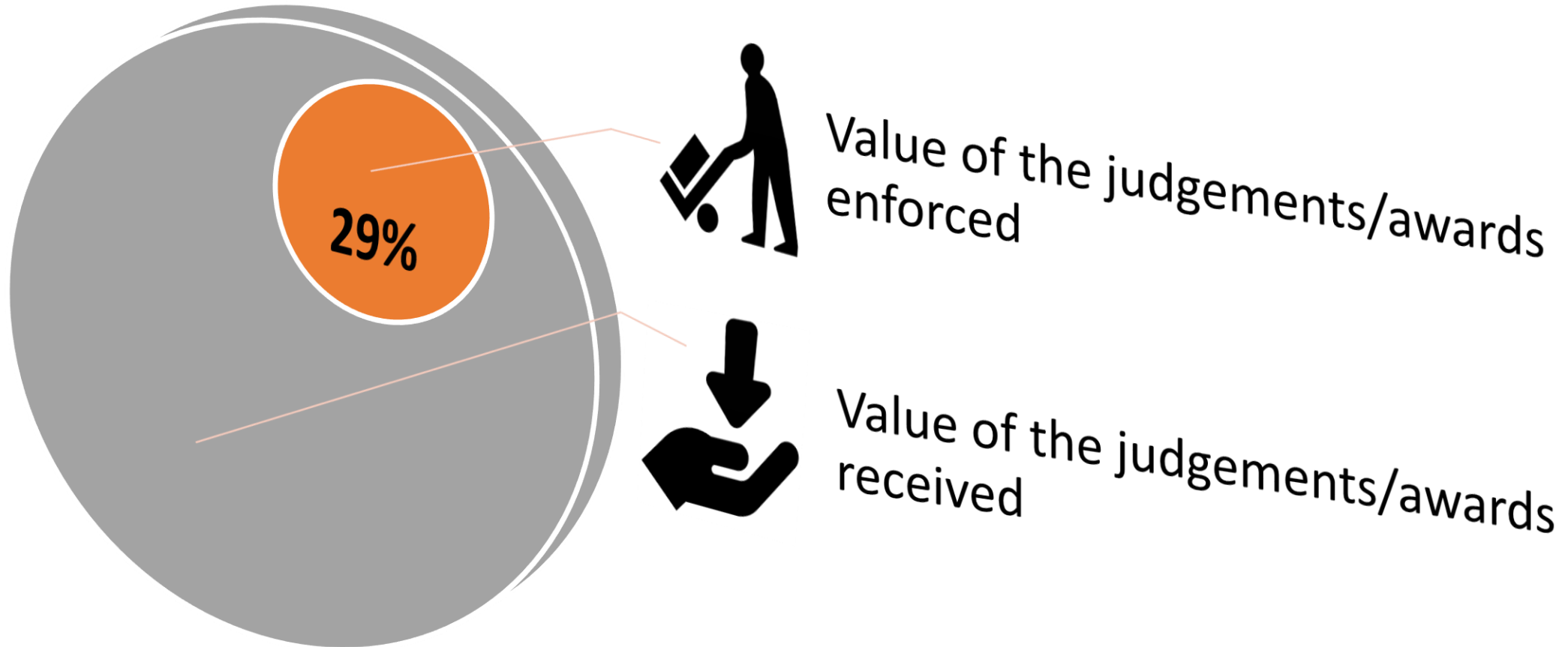
Issues surrounding foreign court judgements and awards.

1. Difficulties of enforcement of judgements and awards in Vietnam

In 2016, at the Department of Civil Judgement Enforcement (the “***Enforcement Department***”) of Ho Chi Minh City:

Value of judgements/awards that are requested for enforcement	VND	Equivalent to USD
Received	23,680,742,674	1,040,683
Enforced	6,837,178,655	300,469

1. Difficulties of enforcement of judgements and awards in Vietnam



1. Difficulties of enforcement of judgements and awards in Vietnam



WHY IS THE ENFORCED
AMOUNT **SO LOW**?



1. Difficulties of enforcement of judgements and awards in Vietnam



There are **03 main reasons**:



Lack of effective sanctions for non-cooperation in enforcement



Lack of cooperation between the authorities



Lack of personnel for enforcement



1. Difficulties of enforcement of judgements and awards in Vietnam



Lack of effective sanctions for non-cooperation in enforcement

ADMINISTRATIVE SANCTIONS



Under the law	In practice
<p>For example, a monetary fine ranging from VND6,000,000 to VND10,000,000 (for corporate violators) can be imposed for:</p> <ul style="list-style-type: none">• Failure to comply with an injunction under a judgement/award;• Delaying in performing the judgement/award despite being capable to do so;• Failure to comply with the settlement agreement recognized by the court.	<p>Enforcement Departments are usually reluctant to impose such monetary fines because:</p> <ul style="list-style-type: none">• Under the law, Enforcement Department of the District can only impose a fine of VND2,500,000 or lower. Thus, it is likely that they have to transfer the case to the Enforcement Department of the City (which is very time consuming).• Imposing the fine means adding more money to collect, i.e. more work to do.

1. Difficulties of enforcement of judgements and awards in Vietnam



Lack of effective sanctions for non-cooperation in enforcement

CRIMINAL SANCTIONS

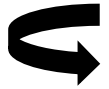


Under the law	In practice
Maximum sanction of 03 years of imprisonment (or 05 years of imprisonment under the new law being effective from 2018) can be imposed if the concerned party intentionally fails to comply with the judgement/award, provided that the authorities have applied all necessary coercive measures.	Enforcement Departments are usually reluctant to request prosecution because: <ul style="list-style-type: none">• Lack of guidance, i.e. how to determine that all necessary coercive measures have been applied;• The sanction is quite low; and• Imprisonment may make it more difficult to collect the money to enforce the judgement/award.

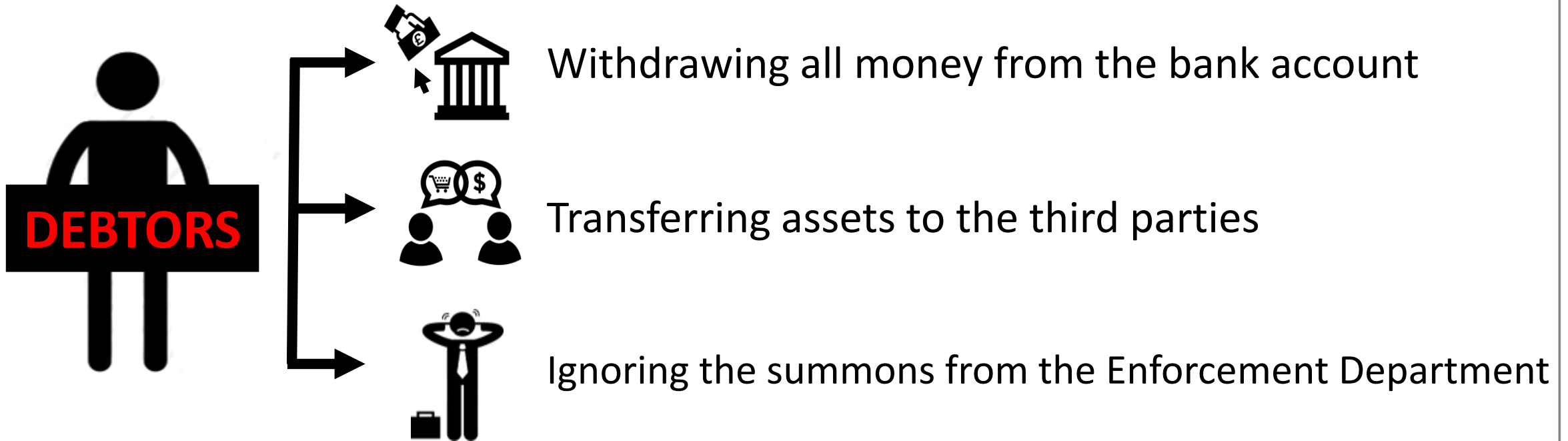
1. Difficulties of enforcement of judgements and awards in Vietnam



Lack of effective sanctions for non-cooperation in enforcement



Debtors will do everything to obstruct the enforcement:

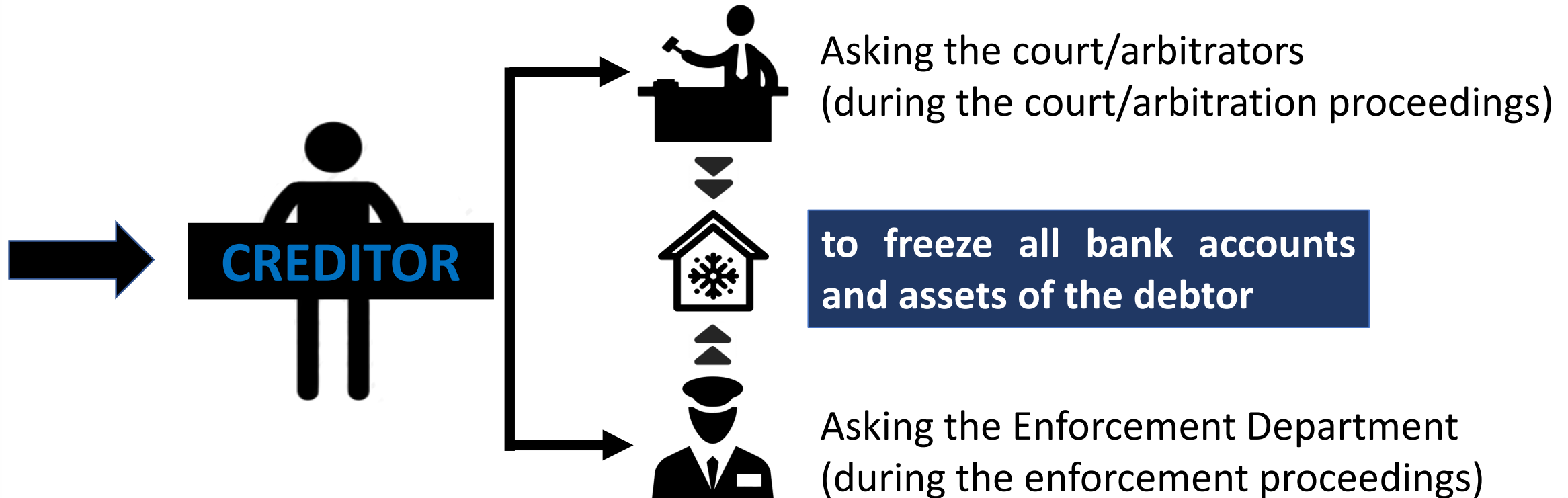


1. Difficulties of enforcement of judgements and awards in Vietnam



Lack of effective sanctions for non-cooperation in enforcement

In enforcement proceedings, you must act fast to secure the assets of the debtor



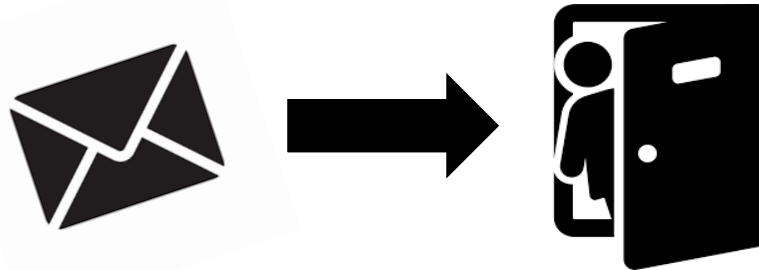
1. Difficulties of enforcement of judgements and awards in Vietnam



Lack of cooperation between the authorities

There is no effective information sharing system between the authorities to quickly seize the assets of the debtor.

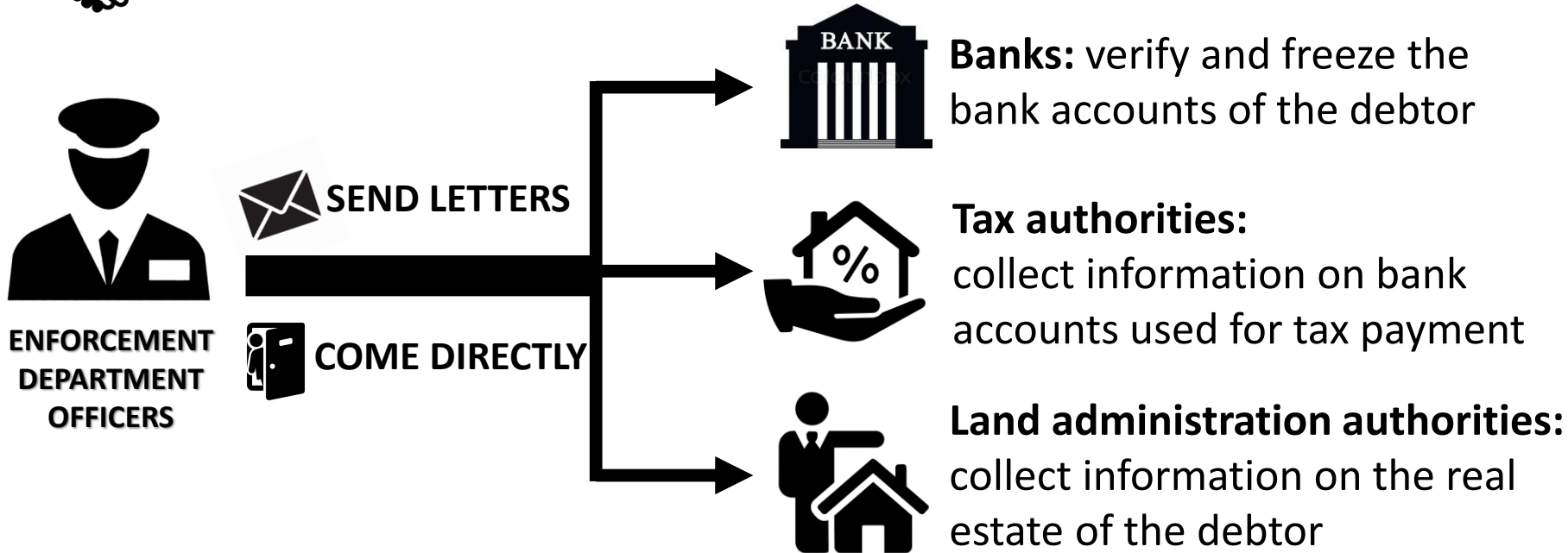
Usually, the Enforcement Department has to send letters, come directly to each authority and related organization to ask for assistance.



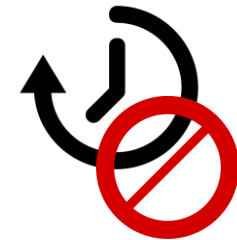
1. Difficulties of enforcement of judgements and awards in Vietnam



Lack of cooperation between the authorities



TIME-CONSUMING

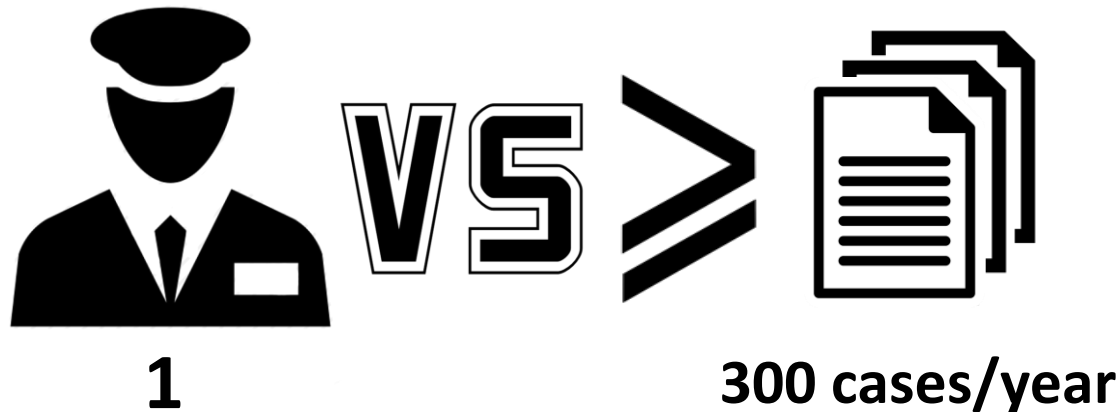


To save time, you should be the connection between the Enforcement Department and other authorities, organizations, e.g. be proactively in sending information relating to the enforcement to relating authorities, organizations and collecting information from them for the Enforcement Department.

1. Difficulties of enforcement of judgements and awards in Vietnam

 Lack of personnel for enforcement

IN HO CHI MINH CITY



Because of the high number of cases, Enforcement Department's officers will only prioritize some cases and will neglect the rest.



YOUR CASE

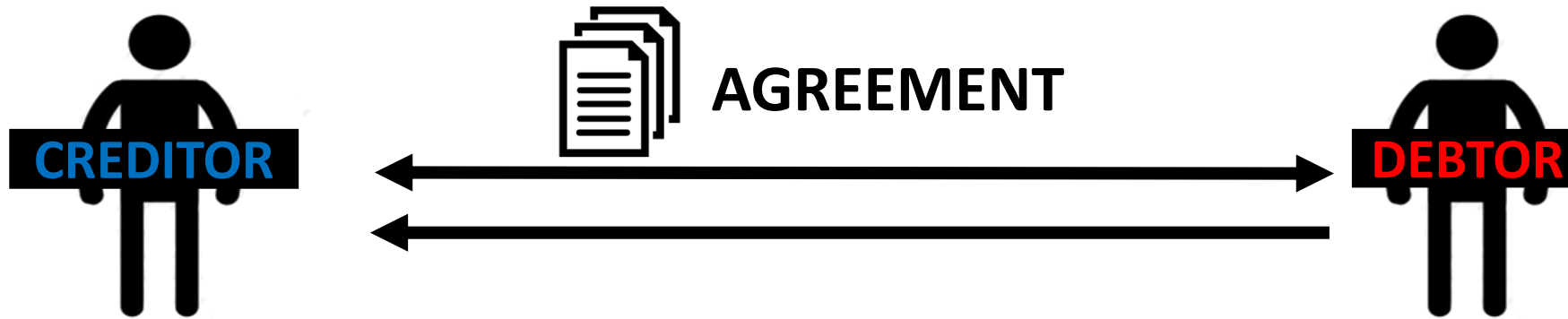
FREQUENTLY FOLLOW-UP



You should make the Enforcement Department's officers prioritize your case by frequently following up with them.

2. Negotiations and agreements regarding the scope of enforcement

Sometimes, the creditor and debtor may enter into an agreement in relation to enforcing the judgement/award. For instance:



Instead of paying in cash, the debtor may want to pay by transferring other types of assets (real estate, goods, machinery, etc.) directly to the creditor;



The debtor may want to ask for extension and the creditor may agree because they do not want to spend time and expenses for the enforcement proceedings.

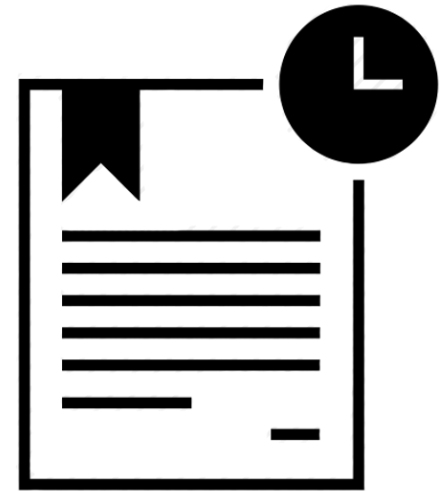
2. Negotiations and agreements regarding the scope of enforcement



CRITICAL ISSUES IN RELATION TO ENFORCEMENT AGREEMENT:

2.1. Ensuring the validity and enforceability of the agreement

When signing the agreement, you can ask for the witness of the Enforcement Department's officer.



2. Negotiations and agreements regarding the scope of enforcement



CRITICAL ISSUES IN RELATION TO ENFORCEMENT AGREEMENT:

2.2. Ensuring that you can revoke the agreement in case of violating and come back to enforce the initial judgement/award

The agreement should include a clause that allow you to revoke the agreement when there is violation.

Please note that the statute of limitations for requesting enforcement is 05 years so you should not give the debtor too much time.



2. Negotiations and agreements regarding the scope of enforcement



CRITICAL ISSUES IN RELATION TO ENFORCEMENT AGREEMENT:

2.3. Waiver of right

If you promise to waive your right under some conditions, you should state clearly that **the waiver will only take effect after the fulfilment of the conditions.**

Otherwise, the Enforcement Department may **dismiss** the enforcement of your right **too soon** and after such dismissal, the Enforcement Department may **not enforce that right again.**



3. Freezing and seizing of the debtor's assets.

3.1. Freezing the debtor's assets

Freezing the debtor's assets is critical to ensure the effective enforcement and should be conducted as soon as possible



3. Freezing and seizing of the debtor's assets.

3.1. Freezing the debtor's assets

DURING THE COURT/ARBITRATION PROCEEDINGS



You must have a strong case;



You must have facts and evidence to prove that freezing the assets early is necessary; and



You may be required to temporarily deposit money into an account as a guarantee that you will pay compensation in case your request for freezing the assets is wrong.

Note: This measure may end after having the final judgement/award so you need to immediately request Enforcement Department to continue freezing the assets after that.

3. Freezing and seizing of the debtor's assets.

3.1. Freezing the debtor's assets

DURING THE ENFORCEMENT PROCEEDINGS

You may request the Enforcement Department to freeze the assets. This only requires that you have information to identify the assets (e.g. which bank account, which land lot, etc.) to provide to the Enforcement Department.

If you do not have such information, you should proactively collect the information by contacting the banks and relating authorities, you **should not wait and rely on the Enforcement Department.**

3. Freezing and seizing of the debtor's assets.

3.2. Seizing the debtor's assets



Money in the debtor's bank accounts is the easiest and fastest one to seize

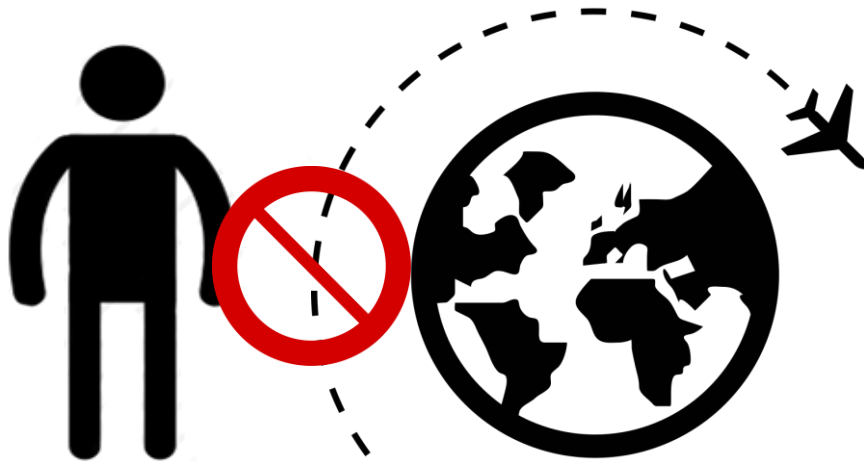


Seizing other types of assets will be more time-consuming because these assets must be evaluated for their values and are usually sold via auction

3. Freezing and seizing of the debtor's assets.

3.2. Seizing the debtor's assets

You may consider taking some actions to pressure the debtors so that they will pay you sooner:



**BANNING THE LEGAL REPRESENTATIVE OF
THE DEBTOR FROM LEAVING THE COUNTRY**



**DISCLOSING THE
JUDGEMENT/AWARD
TO THE PUBLIC**

4. Navigating the vague language in court judgements and arbitral awards



Vague language in the judgement/award may adversely affect the enforcement



Carefully check the judgment/award if there is any vague language or typo (especially the numbers)



(*)

Request the court/arbitrators to clarify and rectify accordingly

(*) The sooner you request, the better, especially for arbitral award, it is provided that such request must be made **within 30 days after receiving the arbitral award.**

4. Navigating the vague language in court judgements and arbitral awards

If the vague language is found during the enforcement proceedings, coming back to ask the court/arbitrators for clarification may be very time-consuming.

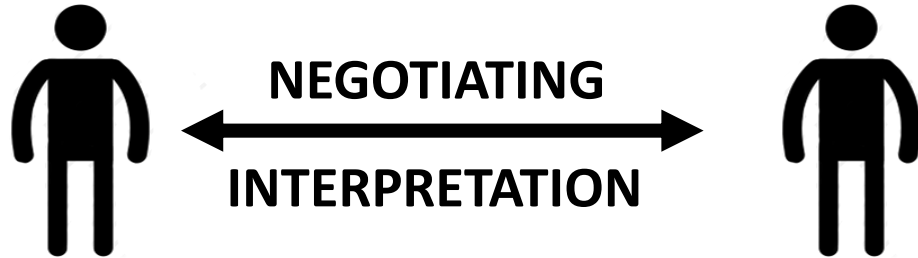


COME BACK TO ASK



4. Navigating the vague language in court judgements and arbitral awards

In this case, you may consider:



**OPPOSING
PARTY**

Can you negotiate with the opposing party for an agreed interpretation?



**OTHER
AUTHORITIES**

Can you request other authorities besides the court/arbitrators for clarification? (e.g. if the vague language relates to tax, you may ask the tax authorities instead)

While waiting for the clarification of the vague language, you should request the Enforcement Department to continue enforcing the parts of the judgement/award that are not affected by the vague language. Otherwise, Enforcement Department will suspend the whole enforcement proceedings.

5. Issues surrounding foreign court judgements and awards

Foreign court judgements and arbitral awards must be recognized by the Vietnamese court before being enforced in Vietnam.



LACK OF AGREEMENTS ON MUTUAL JUDICIAL ASSISTANCE BETWEEN VIETNAM AND OTHER COUNTRIES



DIFFICULT FOR RECOGNITION OF FOREIGN JUDGEMENTS



5. Issues surrounding foreign court judgements and awards

Currently, Vietnam only enters into agreement on mutual recognition of judgements with a few countries, for example:



Algeria



Cuba



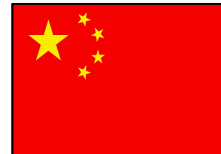
Kazakhstan



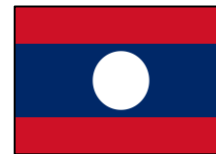
Poland



Belarus



China



Laos



Russia



Bulgaria



French



Mongolia



Ukraine



Cambodia



Hungary



North Korea

5. Issues surrounding foreign court judgements and awards

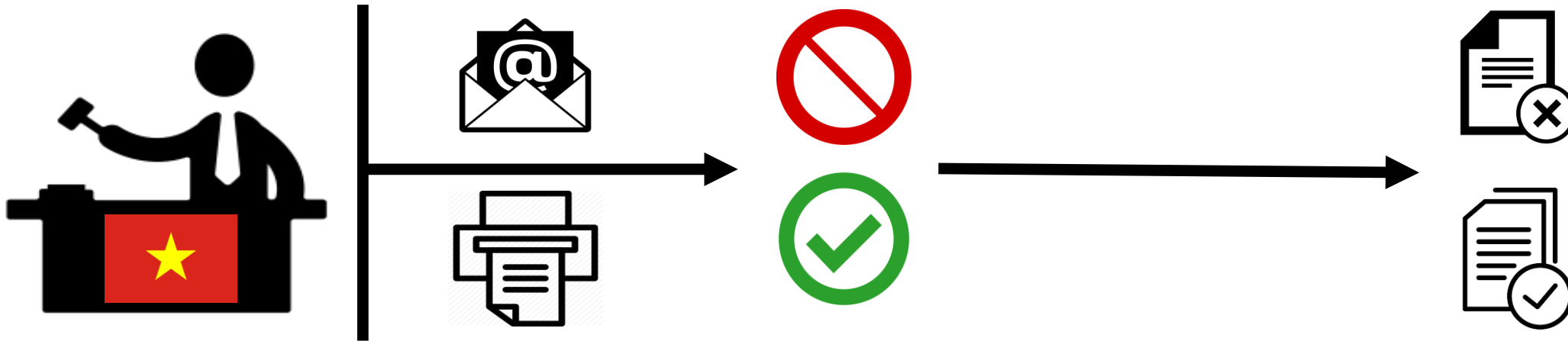


Recognition of foreign arbitral awards is easier than foreign court judgement due to the 1958 New York Convention which Vietnam is a signing party.

However, this is still quite difficult as the judges in Vietnam tends to use the Vietnamese law to assess the foreign arbitral proceedings and rule that the arbitral proceedings was wrongly conducted (because the litigation proceedings in Vietnam is very different from other countries).



5. Issues surrounding foreign court judgements and awards



For example, some judges may find that serving notice via email during the arbitral proceedings is insufficient (because in Vietnam, all notice must be served by sending hard copy directly to the recipient) and thus, refuse to recognize the arbitral award.

To convince the judge, you need to educate him/her about the foreign law and its differences with the Vietnam law. You need to make the judge understand that some proceedings may be very strange in Vietnam but they are normal and reasonable in the foreign country.



THANK YOU FOR LISTENING