



ESSENTIAL NOTES WHEN ENTERING INTO A JUDGMENT ENFORCEMENT AGREEMENT

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The below Legal Summary prepared by BLG contains a brief discussion with tailored practical information for investment and business activities in Vietnam.

The article concentrates on essential notes when entering into a judgment enforcement agreement.

Freedom of agreement is one of the fundamental principles of civil law. It is also applicable in the context of judgment enforcement. Pursuant to clause 1 Article 6, and Article 7 of the Law on Enforcement of Civil Judgments No. 26/2008/QH12, as amended and supplemented by Law No. 64/2014/QH13 (*the "LOECJ"*), a judgment creditor and a judgment debtor (*hereinafter referred to as the "Involved Parties"*) have the right to reach agreement on judgment enforcement. In other words, Involved Parties may negotiate and then execute an agreement on the enforcement of part or all an effective judgment, or decision on the basis of their established civil rights and obligations under such civil judgment or decision. This agreement usually takes the form of a judgment enforcement agreement (*the "JEA"*).

This article will highlight some notes when parties enter into such civil JEA.

1. Principles of JEA

Under the applicable laws of Vietnam^[1], the JEA need to follow the following principles:

- It does not breach legal prohibitions or contravention of social ethics, which has been recognized and defined in Article 123 of the Civil Code 2015^[2];
- True of reality;
- It does not affect the legitimate rights and interests of third parties or avoid the obligation to pay judgment enforcement fees.

Although the third parties' rights and interests are recognized in certain articles of the LOECJ, the term "third parties" lacks a precise definition. However, based on current regulations, third parties could be understood as any individual or organization whose legitimate rights and interests are affected due to judgment enforcement by the competent civil judgment enforcement agency (*the "EA"*).

2. Scope of the JEA

Derived from the established civil rights and obligations in the judgment or decision, Involved Parties can agree on various aspects of judgement enforcement such as time, location, content, method, or legal consequences of non-compliance.

^[1] Clause 1, Article 6 of LOECJ; Clause 4 Article 5 of Decree 62/2015/ND-CP and Clause 3 Article 1 of Decree 33/2020/ND-CP.

^[2] Article 123. Invalidity of civil transactions due to breach of legal prohibitions or contravention of social ethics (The Civil Code 2015)

[...]

Legal prohibitions mean provisions of law which do not permit entities to perform certain acts. Social ethics are common standards of conduct as between persons in social life, which are recognized and respected by the community.

However, certain elements are excluded from the scope of the JEA, specifically^[3]:

- Fines, retrospective collection of illicitly earned money and assets, court fees and charges;
- Refund of money and assets to involved parties;
- Confiscation into the State budget or destruction of material evidences and assets; other State budget remittances;
- Recovery of the rights to use land and other assets subject to remittance into the State budget;
- Decision on application of injunctive relief; and
- Decision on bankruptcy settlement of the court.

From the above cases, it can be seen that the proactive judgment enforcement by the EA often relates to the judgment enforcement issues that ensure State and public interests or the return of money and property to citizens. It is usually administrative or coercive, so the EA is responsible for proactively holding the judgment enforcement, without any request from Involved Parties. Consequently, Involved Parties do not have the right to reach the JEA with the EA on the performance of obligations under the above judgment or decision.

In addition, according to applicable laws of Vietnam^[4], Involved Parties can agree on other aspects of judgment enforcement contents such as: judgment enforcement postponement or suspension, transfer of the judgment execution right or obligation to a third party, an income subtraction of judgment debtors, asset price or valuation organization, the asset handover to offset judgment enforcement obligations, selection of auctioneering organizations, asset price reduction in the absence of bidders or unsuccessful auctions, release of distrained assets, etc.

3. Execution of the JEA

In general, the JEA must be in writing and duly signed or confirmed by Involved Parties. It could be executed at any time. Involved Parties may reach a JEA before any judgment enforcement request is made or the judgment enforcement decision (the “*JED*”) is issued by EA. Even when the EA is implementing the JED, the judgement creditor can submit a written suspension request for the execution of a JEA.

However, issues relating to the JEA in each case could be different as below:

^[3] Article 7 and Article 36 of LOECJ.

^[4] Article 48, Article 50, Article 54, Article 78, Article 98, Article 100, Article 101, Article 104 and Article 105 of LOECJ.

	<u>In case 01:</u> JEA before judgment enforcement request/JED ^[5]	<u>In case 02:</u> JEA when JED has been issued ^[6]	<u>In case 03:</u> JEA when the EA is implementing JED ^[7]
The Content of JEA	Time, location, and content of JEA (agreements).	Time, location, content, timeline, and legal consequences for failure to implement it.	Besides JEA, there must be the suspension request by judgment creditor clearly expressing the request to suspend the enforcement of part or whole.
Witnessing by the EA officer	None.	Involved Parties may request the enforcement officer to enter into the JEA as a witness and sign the JEA. Witnessing by the enforcement officer must be performed at the headquarters of the EA.	
Legal Consequences	In case the obligor fails to properly perform the agreed obligation, the obligee may request judgment enforcement for the portion of non-performing obligation according to the contents of the judgment, decision, provided that the statute of limitations for requesting judgment enforcement remains.	In case the parties fails to voluntarily comply with the agreed content, the parties has the right to request the EA to continue implementing the judgment enforcement.	<ul style="list-style-type: none"> - The agreed issues will be suspended by the head of the EA^[8]. - After that, the parties have no right to request the judgment enforcement again for the suspended issues.

^[5] Clause 1 Article 5 of Decree 62/2015/ND-CP.

^[6] Clause 2 Article 5 of Decree 62/2015/ND-CP and Clause 3 Article 1 of Decree 33/2020/ND-CP.

^[7] Clause 3 Article 5 of Decree 62/2015/ND-CP and Clause 3 Article 1 of Decree 33/2020/ND-CP.

^[8] Article 50.1.(c) of the LOECJ.

Judgment Enforcement Fees	None ^[9] .	<p>The judgment enforcement fee is calculated on the amount of money or assets actually received ("<i>Fee</i>"). In case Involved Parties execute JEA, Fee shall be paid as follows:</p> <ul style="list-style-type: none"> - In case the EA has issued the JED but the Involved Parties have voluntarily executed the judgment within the voluntary judgment enforcement period according to the law: no Fee^[10]. - In case the EA (i) has issued the JED but not issued the coercive judgment enforcement decision yet or (ii) has issued the coercive judgment enforcement decision but not coerced the judgment enforcement yet and Involved Parties execute the JEA: the judgment creditor must pay 1/3 of Fee^[11]. - In case the EA collected money or performed the coercive judgment enforcement: the judgment creditor must pay the entire of Fee^[12].
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It is noted that once the EA issues the JED, it means that authority participates in the judgement enforcement process. Thus, when executing JEA at this stage, Involved Parties should pay attention as follows^[13]:

- **Case 01:** In the event Involved Parties only agree on the time, location, content, method of the judgment enforcement and the JEA is consistent with whole of the JED's content, the enforcement officer will record and execute according to such JEA.

The judgment enforcement is considered to be done when the parties complete the JEA's contents.

^[9] Clause 8 Article 6 of Circular 216/2016/TT-BTC

^[10] Clause 8 Article 6 of Circular 216/2016/TT-BTC

^[11] Clause 4 Article 4 of Circular 216/2016/TT-BTC

^[12] Clause 5 Article 4 of Circular 216/2016/TT-BTC

^[13] Please refer to the link:

https://thads.moj.gov.vn/noidung/tintuc/lists/nghiencuutraodoi/view_detail.aspx?itemid=755

- **Case 02:** In the event only part(s) of JEA are as same as the JED's content, the satisfied content of JEA will be considered to be completely enforced and the remaining issues will be instructed by the enforcement officer in either one of the following ways:
 - (i) Involved Parties will enter into another written agreement to resolve it; or
 - (ii) The judgment creditor will submit a requested letter to ask the EA to suspend the enforcement of part or whole of its established rights and interests under the JED according to Article 50.1.(c) of the LOECJ.

In this case, if the suspended content is related to movable or money, gold, or valuable papers, Involved Parties may foresee arising risks before reaching an agreement. Therefore, it can be said that the EA's suspension decision is consistent with Involved Parties' will as well as respecting their disposal right under the principles of the Civil Code 2015. However, if the suspended content is related to real estate, it may be difficult for Involved Parties in establishing their house ownership or land use rights.

- **Case 03:** In the event the entire JEA is different from the JED's content, the enforcement officer will instruct the judgment creditor to file a request letter to suspend the enforcement of whole of its established rights and interests under the JED similar to item (ii) of Case 02 above.

4. Practical application and key consideration when entering into the JEA

In general, civil judgment enforcement in Vietnam often experiences delay and can be prolonged, even indefinitely due to various reasons^[14]. Therefore, JEA is a preferred option for Involved Parties. It aims at voluntariness and freedom of agreement on the judgment enforcement, thereby speeding up the enforcement judgment process. To ensure JEA is applied effectively, there are certain points to note when entering into JEA:

Firstly, Involved Parties have to closely adhere to the legal regulations on JEA to ensure compliance with the JEA's principles, scope and execution in accordance with the law, consistent with the entire content of the JED's.

Secondly, while JEA is recognized by laws, it currently lacks regulation on its effective time. To ensure its enforceability, the JEA should take effect immediately from the date of signing such JEA.

^[14] Please refer to Section 2 of BLG's article at the link:
<https://bizlegalgroup.com/processes-of-commercial-judgment-enforcement-in-vietnam-2.html>

Thirdly, it is especially noteworthy that there are still cases where the judgment debtor fails to comply with their committed obligations even after JEA's execution, leading to the judgment creditor having to request judgment enforcement or request the EA to continue coordinating the judgment enforcement or sue the case. Therefore, it is advisable for JEA to incorporate some security measures to ensure its execution such as impoundment of property and documents or mortgaging the assets of the judgment debtor. In addition, JEA should clearly specify the legal consequences for failure to implement or improper implementation of the JEA. Accordingly, a fine or compensation may be imposed in case of the JEA violation.

Finally, depending on each specific case, some effective judgments and decisions recognize the rights and obligations of the persons with related interests and obligations towards the litigant and vice versa. In this case, the JEA needs the participation of the persons with related interests and obligations to ensure that all established rights and obligations under the judgment or decision are enforced.

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