**INTERIM MEASURES IN ARBITRATION PROCEEDINGS IN VIETNAM**

Alternative dispute settlement is now an increasingly popular way of dispute resolution in Vietnam, especially for high value disputes or cross border transaction disputes. It is the fact that not all of disputing party will cooperate and be goodwill to settle the dispute. In many cases, a disputing party must invoke an interim relief order from arbitral tribunals or courts to ensure the ability to settle the case and enforce the judgment. This is the right and also the effective way for claimant to protect his legitimate interest. This article will briefly summarize key notes parties should take into account if they want to apply for interim reliefs during arbitration proceedings.

**1. Interim measures by the arbitral tribunal**

According to Article 48.1 of the Law on Commercial Arbitration 2010 (“**LCA**”), a disputing party may request an arbitral tribunal or a court to order interim reliefs under the LCA and relevant laws, unless otherwise agreed by the parties. The Civil judgment enforcement Authority will assist in carrying out the orders of a tribunal.

Accordingly, the arbitral tribunals have the power to apply interim relief under Article 49.2 of the LCA, namely:

* prohibition of any change in the status quo of the assets in dispute;

* prohibition of acts, or ordering one or more specific acts to be taken, by a party in the dispute aimed at preventing conduct adverse to the process of the arbitration proceedings;

* attachment of the assets in dispute;

* requirement of preservation, storage, sale or disposal of any of the assets of one or all parties in dispute;

* requirement of an interim payment of money as between the parties; and

* prohibition of the transfer of property rights of the assets in dispute.

It should be noted that, if a party has requested a court to apply one or more interim reliefs under Article 49.2 of LCA but also requests the arbitral tribunal to order such interim reliefs, the arbitral tribunal shall refuse such request. In addition, a party also cannot request the courts to order an interim relief if it has previously done so with the arbitral tribunal, except where the relief does not fall within the tribunal authority.

When assessing the request for the interim relief, arbitral tribunals may require a security for cost. The applicant must 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. Regarding the improper application of interim reliefs, the LCA also provides that the arbitral tribunals applying improper interim reliefs or those in excess of a party's request may be sued by a party for damages and losses caused by the application of such improper interim reliefs.

**2. Interim measures by the courts**

Under Vietnamese law, if parties to contracts have agreed that disputes arising from the contract will be resolved by way of arbitration, the court will not have jurisdiction to resolve such a dispute. However, courts still play important role in the arbitral proceeding. One of the crucial roles of courts is to order interim reliefs upon a party’s request under the LCA.

Accordingly, under Article 53 of the LCA, a party may request the competent court to apply one or more interim reliefs after submitting its statement of claim, especially when arbitral tribunals are not yet established or for the measures that arbitral tribunals do not have the authority to order. The LCA provide that the order and procedures for applying, changing, adding or canceling a court's interim relief will comply with the Civil Procedure Code.

Although Article 48.1 of the LCA states that a court can order interim reliefs under the LCA and **relevant laws**, including the Civil Procedure Code, Article 12 of Resolution No. 01/2014/NQ-HĐTP may be interpreted that courts are only allowed to order interim reliefs listed under Article 49.2 of the LCA. In practice, several judges hold the view that courts cannot apply the interim reliefs beyond those under Article 49.2 of the LCA, for example freezing bank account of a disputing party, despite that freezing bank account is one of interim reliefs under the authority of courts as provided in the Civil Procedure Code. We have a different view that the type of interim reliefs which can be applied by a court in arbitration proceeding must include those available to an arbitral tribunal under Article 49.2 LCA and those within the court authority under the civil procedure laws.