

**THE BASICS OF ARBITRATING A DISPUTE
A PRACTICAL GUIDE TO THE ARBITRATION PROCESS**

**Interim Relief under new law on
commercial arbitration in 2010**

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Questions for this session

- Where to seek measures?
- What type of measures?
- Will they be enforceable?
- Does the tribunal possess sufficient coercive power?



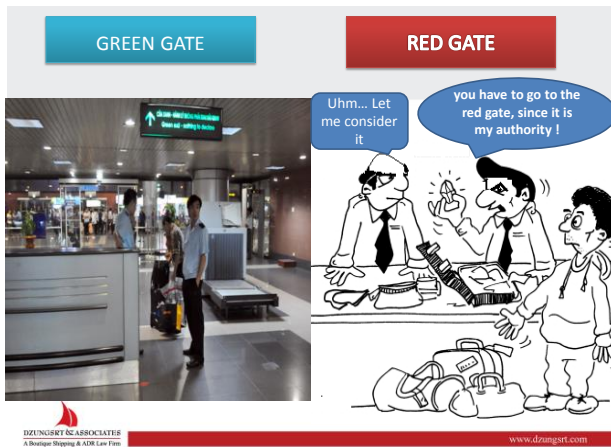
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Drafting Process

- The Drafting Committee
- The Court's Attitude
- The Editing Board
- The Judicial Committee



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Principles

- Party Autonomy: exclusion of right
- Red gate or Green gate: you have to choose one gate only.

WHERE TO SEEK INTERIM RELIEF?

- Any competent provincial court
- Arbitration tribunal
- Stand by panel? NO

WHERE TO SEEK INTERIM RELIEF?

- Normal authority:
 - National courts where interim relief is needed.
 - Effect of arbitration agreement?
 - Excludes national courts' jurisdiction? NO
 - Excludes arbitration tribunal' power? YES
 - "All disputes": includes interim relief.
- Who knows the case best? Tribunal
- Distinction between time
 - Before tribunal established: national court
 - After tribunal established: either national court or arbitration tribunal

WHERE TO SEEK INTERIM RELIEF?

Look to

- Applicable national law
- Applicable arbitration rules
- Contractual provisions

LIMITED TYPES OF TRIBUNAL'S INTERIM RELIEF

- (a) Prohibition of any change in the status quo of the assets in dispute;
- (b) Prohibition of acts by, or ordering one or more specific acts to be taken by a disputing party, aimed at preventing conduct adverse to the process of the arbitration proceedings;
- (c) Attachment of the assets in dispute;
- (d) Requirement of preservation, storage, sale or disposal of any of the assets of one or all disputing parties;
- (dd) Requirement of interim payment of money as between the parties;
- (e) Prohibition of transfer of asset rights of the assets in dispute

Characteristics

- The Tribunal: contractual right, not a statutory obligation to apply interim measures
- The Tribunal's power is limited to disputing parties only, its decision is not binding on the third party
- The Tribunal's penalty may be imposed on uncooperative enforcement debtor
- No immunity for arbitrators



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The application of interim relief by the national court

- Legal basis: CPC 2004 Chapter VIII
- Unlimited types of interim relief
- The judge's statutory duty to consider
- The state liability for compensation
- The court order is binding and enforceable against all involved parties.



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INTERIM AWARDS AND ORDERS

- Enforceable of Vietnamese interim awards and orders under Vietnamese law?
 - Law on commercial arbitration
 - Draft of governmental decree
 - Law on the enforcement of judgments
- Enforceable of foreign interim awards and orders in Vietnam?



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INTERIM AWARDS AND ORDERS

- Enforceable under New York Convention?
 - No reference to interim measures
 - Orders not covered by New York Convention
 - Interim relief by nature not final
 - UNCITRAL Working Group reviewing enforcement facilitation for interim measures



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INTERIM AWARDS AND ORDERS

- Enforceable under CPC 2004?
 - Interim relief by nature not final
 - Legally - Yes
 - Practically - NO
- Enforceable under Law on commercial arbitration in 2010? NO
- Enforceable of Vietnamese orders abroad?



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Thank you for your kind attention!

Q & A

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