

# **RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN THAILAND**

By:  
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## **I. Introduction**

The problem of recognition and enforcement of foreign judgments is closely linked to Private International Law. Beginning with the principle of territorial sovereignty that prevents foreign judgments from having any effect in any of the other countries, however, we have found that various doctrines have been propounded to explain why a country should show respect to the recognition and enforcement of foreign judgments. The principal doctrines have been those based on comity, reciprocity, obligation and acquired rights or vested rights.

It is mostly due to a matter of an increase contact between the citizens of different countries in the world with rapid transportation and communication especially in the sphere of international trade and business transactions which mainly requires prompt, certainty and effectiveness. Businessmen are generally concerned with the various impediments which may be placed in the way of the recognition and enforcement of their claims. Without security of transactions, which appears as the underlying policy of major importance in this field of Private International Law, commercial transactions between citizens of different countries would be greatly lessened. Apart from these commercial relations, the question of recognition of foreign judgments, merely a declaratory judgment, one declaring the status of a person; a decree of divorce or nullity and all judgments dismissing an action becomes more crucial at present.

Therefore, a policy question to be considered is how rigidly or how easily a foreign judgment should be recognized and enforced in any of the other countries without endangering its local interest. It has been found that there must be some controls available to enforcing court, in order that it can protect not merely a particular party, but more importantly, its domestic legal order.

Generally speaking, these controls or criteria comprise some basic requirements :

- The foreign rendering court has jurisdiction, this being measured by jurisdiction in the international sense or international jurisdiction.
- The foreign judgments which is sought to be recognized or enforced must be final and conclusive.
- A foreign judgment, if in personam, must be for a definite sum.
- A foreign judgments was not obtained by the perpetration of fraud.
- The recognition and enforcement of the foreign judgments would not contrary to the enforcing court's notion of public policy.
- The foreign judgment was not obtained by a violation of the rule **audiatur et altera pars**, i.e. either that the foreign court refused to hear one of the parties or that no notice or no adequate notice of proceedings was given to the defendant.

Basically, there are two methods of the recognition and enforcement of foreign judgments. The first method is to bring a new action in the foreign country where recognition or enforcement is sought. This action will normally be based on the judgment which has been obtained and not on the original cause of action between the parties. Secondly, it may be possible to register the judgment under reciprocal enforcement legislation in the foreign country where it is sought to be executed and then to enforce it directly in the same manner as a

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judgment given in the court of that country. The method of bringing an action upon the judgments is dilatory and cumbersome. The reciprocal enforcement regime is generally more expeditious and less expensive than an action on a foreign judgments

## II. Thailand and the Recognition and Enforcement of Foreign Judgments

There are currently no provisions in the Civil Procedural Code or in the Conflict of Laws Act B.E. 2481 (1938) which deal specifically with the recognition and enforcement of foreign judgments. Besides, Thailand has not, as yet, entered into any relationships, bilateral or otherwise, for the reciprocal enforcement of judgments.<sup>1</sup> However, one can find a reported case, Supreme Court Decision No. 585/2461 (1918), which dealt with enforcement of foreign judgment in Thailand. Considering that the doctrine **stare decisis** is observed in the Thai judicial system, the case may be cited as the only judicial authority available on the subject of enforcement of foreign judgments.

The fact of the case were as follows. The plaintiff, a **Fam Thi Lian**, a Vietnamese citizen entered into a contract of sale with the defendant, a **Tan Wan Neo**, also of Vietnamese subject whereby the defendant sold 15 rickshaws and two bicycles to the plaintiff. The plaintiff claimed that he had paid the defendant for the price but the defendant failed to deliver the goods. The contract was concluded in Saigon. The plaintiff then sued the defendant in Saigon Civil Court. The Court gave judgments for the plaintiff. The defendant fled to Bangkok where the plaintiff sought enforcement of Saigon Civil Court judgment. The Supreme Court of Siam, reversing both the Bangkok Civil Court and the Court of Appeal, held that:

The principle underlying recognition and enforcement of foreign judgments is one of mutual respect among nations. The court of Siam will recognize and enforce judgment rendered by a foreign court provided that the judgment was given by the court of competent jurisdiction. The judgment must also be final and conclusive on the merits of the case. In this case, the plaintiff and the defendant were both Vietnamese citizens and thus, the Saigon Civil Court enjoyed competent jurisdiction over the case. However, the judgment of the Saigon Civil Court was given in default. The plaintiff failed to prove the Vietnamese Civil procedure law concerning the finality and conclusiveness of the judgment given in default. Under the Civil Procedural Act B.E. 2452 (1909) of Thailand, the defendant who had been declared by the court to be in default of appearance and against whom a judgment had been given, may apply for a new trial within fifteen days from the date of judgment. Upon failure to prove otherwise, the Court of Siam will hold that judgment given in default is not final and conclusive.

The plaintiff's claims were dismissed. However, the Supreme Court ruled that the plaintiff was entitled to bring a new action in Siam on the same cause of action against the same defendant.

It should be noted that the decision was heavily influenced by English law since **Phrya Devidura (Bovnchuay Vanikul)**, the President of the Supreme Court, who wrote the opinion

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<sup>1</sup> In 1980 negotiations were held between the Governments of Thailand and France on the judicial cooperation in civil matters. The French delegations had initiated reciprocal enforcement of judgments in civil matters into the agenda, but the Thai counterparts did not think it was in the best interest of the country to enter into such an agreement at the time and thus the negotiations were concentrated on judicial cooperation prior to judgment which unfortunately left uncompleted. In 1996 Australia and Spain have express interest in negotiating an agreement on reciprocal enforcement of civil judgments with Thailand but the negotiations only succeeded in so far as the cooperation prior to judgment.

of the Court was educated in England. Nonetheless, this seems to be the position of Thai law on the recognition and enforcement of foreign judgments.

### **III. Final Remarks**

It seems that Recognition and Enforcement of Foreign Judgments is a complicated topic which has not received sufficient attention in Thailand. This may be due to the rarity of cases concerning this topic and the paucity of Supreme Court decisions related thereto. Besides, Thailand is not a party to the international agreements relating to Recognition and Enforcement of Foreign Judgments. There is no statutory law on the topic, and the state of Thai law concerning this is opaque. Although there have been some initiatives at the international level to encourage Thailand to accede to this international agreements, Thailand has refused to commit herself. The reason is her lack of readiness and uncertain attitude concerning the benefits to be derived therefrom.

