

# Legal Execution in Accordance with Rulings of Foreign Courts among ASEAN Member Countries<sup>1</sup>

*Supatra Phanwichit*

School of Law, Sukhothai Thammathirat Open University, Thailand

E-mail: Thailawresearch@gmail.com

## Abstract

Presently, the ASEAN countries do not have any agreement on legal execution in accordance with the rulings of foreign courts, probably affecting confidence of both ASEAN investors and foreign investors in investment in the ASEAN countries, because of a lack of measures for facilitating and ensuring the judicial system and legal execution on properties of a debtor in a country where the judgment is passed that is required to levy upon the debtor's properties situated in another country. As such, to recognize force of foreign courts' rulings is of paramount importance. Therefore, a study and research must be conducted for offering approaches to reaching an agreement among the ASEAN countries, in order to actualize the legal execution of civil and commercial cases in accordance with foreign courts among the countries, and stipulate forms and mechanisms suitable for concluding an agreement on legal execution in accordance with the rulings of foreign courts in civil and commercial cases among the ASEAN countries, thereby mainly focusing on study of recognition and execution of foreign courts' rulings under a Common Law System and Civil Law System, recognition and execution of foreign courts' rulings among the ASEAN countries, and study of criteria concerning recognition and execution of foreign courts' rulings in civil and commercial cases among the European Union countries.

**Keywords:** Legal Execution, Enforcement of foreign judgment, ASEAN

## Significance and Background of the Research Problem

“Recognition of foreign judgment” means an act, in which a court of one country exercises its judicial power to recognize a judgment of a court of another country, whereby the judgment does not require legal execution. In principle, it is a judgment relating to recognition of a person's legal status, including, but not limited to, a judgment relating to family rights, such as divorce, child legitimacy, child adoption, or a case where the party, who refers to a judgment of a foreign court for any purpose other than legal execution. For example, in a case where a judgment of a foreign court already dismissed the plaintiff, the defendant in the case then refers to the judgment of the foreign court as its defense. If the domestic court recognizes the judgment of the foreign court, the plaintiff's plaint shall be dismissed on a ground of redundancy, etc.

“Enforcement of foreign judgment” means an act, in which a court of one country exercises its judicial power to execute in accordance with a judgment of a court of another country, whereby the judgment requires legal execution, including, but not limited to, a judgment requiring payment of a monetary debt. For example, in a case where the defendant is adjudged to pay a monetary debt to the plaintiff, and the defendant does not have any property in the country of the court passing the judgment, but has properties in another country. In such case, the plaintiff needs to apply the judgment of the former country for being executed on the defendant's properties in the latter country. It is a case where a court of

<sup>1</sup> This Article is the research article of the research project on legal execution in accordance with rulings of foreign courts among ASEAN member countries (2015), Chula Unisearch, presented to Office of the Attorney General, whereby the author is a lead researcher of the project.

one country exercises its judicial power on the defendant or the defendant's properties in accordance with a judgment of a foreign country (a judgment debtor of a foreign court) located under the territorial jurisdiction of the court, to which the plaintiff submits the application for legal execution (a judgment creditor of a foreign court), based on criteria and procedures under the provisions of the law of the court of the country receiving the request for the legal execution, as to be in accordance with the judgment of the court passing the judgment. In other words, applying a judgment of one country for execution in another country, in order that the requested court shall conduct legal execution, whereby a judgment, which can be executed, by nature, must be a judgment to be executed for being in accordance with the judgment of the court of the country passing the judgment, in a manner that the judgment concerns a personal claim (judgment in personam) or concerns properties (judgment in rem), in general, probably resulting from breach of contract or probably resulting from tort, for example, a judgment ruling the defendant to pay damages to the plaintiff, or a judgment ruling the defendant perform an action or refrain from performing an action, which may inflict damage, etc.

Considering the said issue and integration of ASEAN Economic Community (AEC) in 2015, when the ASEAN community was established, economies, trades, services, investment and funds would freely move among the ASEAN countries, business people and investors in the ASEAN countries would more frequently deal business, conclude juristic acts and conduct transactions among one another, and it would naturally lead to so many disputes and conflicts resulting from the juristic relations among peoples under different legal regimes and jurisdictions, and arising difficulties would be inevitable, and the problems of recognition and execution in accordance with judgments of foreign courts at a regional level of ASEAN are found to lack clarity, comparing to the status of the same matter at a state level, whereby, within the cooperative framework of ASEAN, there is not even an agreement concluded on the matter of recognition and execution in accordance with judgments of foreign courts among the member states, either bilateral or plurilateral. Moreover, it appears that no ASEAN countries have become members of any international convention concerning recognition and execution in accordance with judgments of foreign courts at a universal level. As such, there is an issue that, if a dispute arises and a settlement is not amicably reached, the disputing parties usually choose to lodge the dispute to a court of the country, in which the legal execution would take place, in order that the judgment would practically affect properties of the judgment debtor. However, it may also turn out that a court's judgment can only levy upon some part of the debtor's properties, because the debtor's properties in that country is not sufficient for the debt repayment, thus the judgment creditor needs to resort to applying the judgment for legal execution in another country, in which other portions of the debtor's properties may be levied upon. Therefore, the case leads to a problem of how a court's judgment of one country should be effective in another country, in order that legal execution result in the judgment creditor fully and fairly recovering the judgment debt.

Out of inevitable necessity, in practice, to conduct juristic acts among the ASEAN countries, which must occur and eventually increase upon integration of the ASEAN community, therefore, research and study are urgently required to be conducted for finding practices acceptable to the ASEAN countries, for solving problems in such cases, as to prepare a legal regime, which is up to an international standard, for supporting integration of the ASEAN community.

## Research Methodology

This Research employs a method of Qualitative Research, comprising of:

**1. Documentary Research:** Research is conducted into documents, which are research reports, books, textbooks, seminar and conference documentation, internet articles with

respect to issues relating to legal execution in accordance with judgments of foreign courts in civil and commercial matters, both information of Thailand and the ASEAN countries;

**2. In-depth Interview:** The Key Informants are professionals, who are involved in the justice administration, including personnel executing laws in various stages, as well as scholars and other stakeholders, and the information, obtained from the in-depth interview, is analyzed to amend the laws and draft guidelines on how to solve problems of legal execution in accordance with judgments of foreign courts in civil and commercial matters among the ASEAN countries;

**3. Organizing Seminars for Hearing Opinions:** Seminars are organized for obtaining opinions, whereby the target groups are professions, who are involved in the justice administration, including personnel executing laws in various stages, as well as scholars and other stakeholders, students and interested general people, in order to gather opinions on approaches to amending the laws and guidelines to solving the problems of legal execution in accordance with judgments of foreign courts in civil and commercial matters among the ASEAN countries, whereby the seminars are organized on 2 events as follows:

- 1) Organizing the 1<sup>st</sup> Seminar: At a regional level, in Region 2, whereby there are approximately 200 participants, provided that, to organize this seminar, the Researchers needs to arrange the personnel and officials of Executive Director's Office of Thailand Criminal Law Institute, Office of the Attorney-General to closely supervise the operations;
- 2) Organizing the 2<sup>nd</sup> Seminar: In Bangkok, whereby there are approximately 200 participants, provided that, to organize this seminar, the Researchers needs to arrange the personnel and officials of Executive Director's Office of Thailand Criminal Law Institute, Office of the Attorney-General to closely supervise the operations.

## Research Results

In conducting the Research and Study for determining forms and mechanisms suitable for conclusion of a mutual agreement on legal execution in accordance with rulings of foreign courts in civil and commercial matters among the ASEAN countries, the Researchers review data from the relevant documents with respect to issues of recognition and execution in accordance with judgments of foreign courts, both under the Common Law System and the Civil Law System, recognition and execution in accordance with judgments of foreign courts among the ASEAN countries, and study the criteria for recognizing and executing rulings under judgments of foreign courts in civil and commercial cases among the European Union countries, and the substantial matters are summarized as follows.

To recognize and execute rulings of foreign courts under the Common Law System in accordance with the British legal principles, judgments of foreign courts cannot be directly executed in Britain, because it is considered, by nature, that the legal regime of each country has limits of execution within the country's own territory. However, as it is accepted that the British general principle of conflict of laws that judgments of foreign courts may be recognized and executed in Britain, and British courts have allowed execution in accordance with judgments of foreign courts since the 17<sup>th</sup> Century thenceforth, based on the Doctrine of International Comity and Doctrine of Obligation, provided that Britain's recognition and execution in accordance with judgments of foreign courts may be categorized into 2 methods, comprising of: recognition and execution in accordance with judgments of foreign courts under the Common Law principles; and recognition and execution in accordance with judgments of foreign courts under the statutory law principles.

As the United States of America are incorporated by several states, each state has its own court system, to which is referred as the State Court, consisting of the court of first instance, the court of appeals, and the supreme court, as such, presently, there is no standard uniform for the states in the United States of America with respect to recognition and execution in

accordance with judgments of foreign courts, different from cases of judgments of another state (Sister State), which are governed by the principle of the Full Faith and Credit Clause of the Constitution of the United States of America, requiring the State Court to recognize and execute final judgments of other State Courts, thereby following the country's basic policy that one nation can be unified by the states recognizing and executing judgments of each other, and strengthening faith and credit in the judicial proceedings. As judgments of foreign courts do not fall under the principle of Full Faith and Credit Clause in the same manner as the judgments of Sister States, and there is no federal law applicable to recognition and execution in accordance with judgments of foreign courts in the United States of America, therefore, recognition and execution in accordance with judgments of foreign courts in the United States of America are governed by the law of each state.

The methods of recognition and execution in accordance with judgments of foreign courts of the Civil Law countries are conducted in proceedings for issuance of permits, to which are referred in France, Belgium and Luxembourg as "Exequatur", in Italy "Delibazione", and in Germany "Vollstreckungsurteil", whereby each of these countries shall hold an *ad hoc* court to try and adjudge cases with respect to issues of recognition and execution in accordance with judgments of foreign courts under its own legal regime. For example, in France, the proceedings for issuance of permit are conducted at a civil court (separated from a commercial court) of first instance, which shall be tried by a single judge, not tried by a full panel of judges, and this rule applies to a foreign judgment, regardless of which court passed the judgment, either a civil court or a commercial court. Such a principle is also applied by the aforementioned countries, except Italy, because Italy require the proceedings for execution of a foreign judgment to be conducted by a court of appeals of the locality, in which the judgment is to be executed, not by a court of first instance. And when an Italian court of appeal recognizes a foreign judgment, the judgment shall become enforceable in Italy.

Methods of recognition and execution in accordance with judgments of foreign courts, conditions for recognition and execution in accordance with judgments of foreign courts, scopes of foreign judgments to be recognized and executed, as well as exceptions of recognition and execution in accordance with judgments of foreign courts of the ASEAN member countries are categorized into two groups, being: the countries influenced by the Civil Law System, comprising of Laos, Cambodia, Vietnam and Indonesia; and the countries influenced by the Common Law System, comprising of Myanmar, Malaysia, Singapore, Brunei and the Philippines. Lodging or applying a judgment (an action on judgment) for a country to recognize or execute the judgment, or requesting a court to recognize or execute a foreign judgment, as a cause of action, is a method widely accepted in the ASEAN countries, which are influenced by the Civil Law System, whereby the proceedings are conducted in a manner more summary than ordinary proceedings, and if a court of the country, of whom recognition or execution of a foreign judgment is besought of, finds that the foreign judgment satisfied the prescribed conditions and is not contrary to the public order or good morality of the people, the judgment shall be recognized or executed. As for methods of recognition or execution in accordance with foreign judgments of the ASEAN countries, who are influenced by the Common Law System, a judgment of one country may become enforceable in another country by at least three methods, that is to say: registering a foreign judgment; lodging an action based on a foreign judgment as a cause of action; and referring to a foreign judgment as evidence in a case.

With respect to the model for recognition and execution of foreign judgments in civil and commercial cases of the European Union countries, contemplating collection and contemplating substantial matters of resolutions of Council of the European Union, there are presently 3 Regulations in force, comprising:

1. Council Regulation (EC) No. 1215/2012 on jurisdiction and the recognition and enforcement of judgment in civil and commercial matters (recast), which becomes in force, replacing Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgment in civil and commercial matters, or Brussels I Regulation, and applies to ordinary civil cases;
2. Council Regulation (EC) No. 4/2009, of 18 December 2008, on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligation, which applies to civil cases claiming for maintenance; and
3. Council Regulation (EC) No. 2201/2003, of 27 November 2003, concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, which applies to civil cases relating to marriage and parental power.

The study of Council Regulation (EC) No. 1215/2012, Council Regulation (EC) No. 4/2009 and Council Regulation (EC) No. 2201/2003 finds that all the three resolution of Council of the European Union consistently prescribe rules concerning recognition and execution of foreign courts' judgments in civil matters, but, in some cases, the law prescribe specific rules and methods for special categories of civil proceedings. Substantial matters of recognition of judgments of foreign courts can be summarized as follows. There are key principles that judgments of foreign courts must be recognized under the law of the country, of whom recognition is besought, without any special process, and that, in any case, absolutely prohibited is the subject matter of the judgments from being reviewed. Likewise, to execute in accordance with judgments of foreign courts, there are key principles that a judgment, which can be executed in the country, must also be enforceable under the law of a foreign country, of whom execution is besought, and that absolutely prohibited is the subject matter of the judgments from being reviewed in any case. With this respect, it is noted that Council Regulation (EC) No. 1215/2012, a law which was newly prescribed, provides with rules for execution in accordance with judgments of foreign courts, without any prior process for declaring the judgments are enforceable (declaration of enforceability). Consistently, Council Regulation (EC) No. 4/2009 provides with methods for execution in accordance with judgments of foreign courts among the countries, who are not bound themselves by the Hague Convention of 2007, whereas approaches under other resolutions still require a process of declaration of enforceability, before judgments of foreign courts can be executed. Apart from this, Council Regulation (EC) No. 2201/2003 also provides with specific methods for civil cases relating to marriage and parental power, as that, in civil cases relating to divorce, legal separation or annulment of marriage, against which appeals cannot be lodged under the law, the persons' marital status must be updated in accordance with judgments of foreign courts without any special procedure, and provides with separate special procedures for execution in accordance with foreign judgments relating to parental power over children, for taking the children's best interest into consideration, such as issuance of certificates of rights to access the children, or certificates concerning return of the children by judgments, etc.

Applying for recognition and execution in accordance with a judgment of a foreign court must be conducted by submitting applications to a court, whereby the applicant must submit complete documentation as required by Council of the European Union, whereby proceedings for execution in accordance with the foreign court's judgment shall be governed by domestic law of the country, to which the application is filed. In this event, the other disputing party may submit an application of challenge, requesting the court not to recognize or execute the said judgment, based on any prescribed ground, such as recognition of the judgment will manifestly conflict the country's public policies, or the judgment resulted from proceedings by default where the defendant did not receive the documentation initiating the proceedings, or other similarly important documents, within a period of time reasonable for the defendant

to argue over the case, or the foreign judgment is not consistent with a judgment, in which a domestic court ruled the same dispute over the parties, etc. Apart from this, while the disputing parties are challenging each other, an application may be submitted to the court for ordering a provisional protection under domestic law of the country. And finally, the court may issue an injunction to execute the foreign judgment, either in whole or in part.

Study of sample judgments of courts in the European Union countries concerning recognition and execution in accordance judgments of foreign courts find that the courts of the European Union countries applies the Council Regulations as major criteria for contemplating whether or not to recognize or execute judgments of foreign courts, for example, the Federal Court of Justice of Germany (Bundesgerichtshof), Judgment of (Beschluss vom) 12/01/2012 IX ZB 211/10, or the United Kingdom's High Court, judgment of 19/01/2011 [2011] EWHC 30 (Comm) Nordea Bank Norge ASA & Vasonia Shipping Company Limited / Unicredit Corporate Banking SpA & Banca di Roma SpA, the High Court of Justice of England and Wales (London), Queen's Bench Division, Judgment of 06/04/2011 [2011] EWHC 829 (Comm) West Tankers Inc / Allianz SpA and Generali Assicurazione Generali SpA), or the Court of Appeal, Civil Division, Judgment of 14/02/2011 [2011] EWCA Civ 81 Francesco Traversa / Carla Freddi, or the Supreme Court of Ireland, Judgment of 29/07/2008 [2008] IESC 48 T. / L., or the Austrian Supreme Court of Justice (Oberste Gerichtshof (AT)), Judgment of. (Urteil vom) 02/05/2011 6 Ob 73/11w, the Court of Appeal (England and Wales), Civil Division, judgment of 19/01/2010 [2010] EWCA Civ 9 Meletis Apostolides / David Charles Orams and Linda Elizabeth Orams.

Taking issues of Thailand's legal execution in accordance with judgments of foreign courts in civil and commercial matters into consideration, it is found that there is not legal criteria and Thailand is no party to any convention on the said matter. As for Thailand, a court can admit a case and rule a request, only if it is expressly authorized by a legal provision, but there is only the Civil Procedure Code, Section 34<sup>2</sup>, dealing with proceedings conducted in a foreign country through a request to the authorities in the country, if there is no agreement or legal provision, the court shall apply the general principles of international law. And from a reversed interpretation, it can be deemed that the legal provisions also authorize Thai courts to conduct proceedings upon requests of foreign courts. The said Section authorizes the courts to refer civil matters to, request for cooperation from, foreign courts, in order to the proceedings, as if they are conducted by Thai courts, whereas the cooperation is limited to pre-judgment stages, for example, cooperation relating to service of pleadings, service of case documentation, requests for witness examination, commissions of forward of issues to be taken evidence by foreign courts.

Thailand does not have an agreement with another country on legal execution in accordance with rulings of foreign courts at the post-judgment stage, partially because Thailand's legal scholars are worried about probable impact on the country's sovereignty, which is a considerably sensitive matter, as appearing in a concept of interpretation of Section 3 of Act on Conflict of Laws, B.E. 2481 (1938), whose subject matter is to fill gaps in the law, for applying to such cases, provided that "Where no provision of this Act or any other Thai law is applicable to a conflict of laws, the general principles of private international law shall apply", whereby Thai court opines that the aforementioned provisions, which are Thai law on general principles of private international law, can apply to recognition and execution in accordance with judgments of foreign courts, but the said opinion is not quite valid, because

---

<sup>2</sup> the Civil Procedure Code, Section 34, if any proceedings are to be conducted, either in whole or in part, through the medium or by request to the authorities of any foreign country, or in absence of any international agreement or legal provision governing the matter, the Court shall comply with the general principles of international law.

the purpose of the said Act is to apply to a matter of a conflict of laws, hence the Act cannot apply to cover legal execution in accordance with judgments of foreign courts, whereby there are 4 supporting reasons as follows:

The first reason - from perspectives of many countries, it is found that, even though interrelated are the matter of jurisdiction, the matter of conflicts of laws, and the matter of recognition and legal execution in accordance with foreign judgments, they are different and separate matters;

The second reason - taking the spirit of the said Act into consideration, it is found that its subject matter deals exclusively with conflicts of laws and criteria for choosing among laws of various countries, who are involved in juristic acts with foreign components, as for the court to determine which laws to apply to specific cases, and the said Act does not expressly provide for legal execution in accordance with judgments of foreign courts;

The third reason - taking minutes of the conference contemplating the draft of the said Act into consideration, found is the conference resolved that “a matter of recognition of judgments of foreign courts should not be included in this Act, but it should be left to Thai court for deliberating (or developing) rules on the matter”. That is to say rules concerning recognition and execution in accordance with judgments of foreign courts are beyond the scope of Act on Conflict of Laws, B.E. 2481; and

The fourth reason - in practice, to authorize the court to apply Section 3 of Act on Conflict of Laws, B.E. 2481, as to find general principles of private international law for recognition of judgments of foreign courts is difficult and at risk of discrepancies, and the true general principles are hard to be found, because criteria for this matter vary among countries.

Apart from this, the Thai Supreme Court's Judgments are found to provide with criteria for legal execution in accordance with judgments of foreign courts as follows:

1. The Supreme Court's Judgment No. 585/2461 on the Case of Mr. Vienvan Namyo, in place of Mrs. Fam Tyilyan - the Plaintiff versus Mr. Tran Van Nyaw and Mrs. Sao - the Defendants, in this case, the Plaintiff and the Defendants were Vietnamese citizens. The Plaintiff lodged the Plaintiff to the Court in Saigon that the Defendants breached a purchase contract, whereby the Plaintiff had paid the price in the full amount, but the Defendants failed to deliver the goods. The Court in Saigon adjudged in favor of the Plaintiff, and ruled the Defendants to repay the money to the Plaintiff. Subsequently, the Defendants escaped into Bangkok. Then, the Plaintiff apply the Judgment of the Court in Saigon to a court in Thailand. The Supreme Court deliberated that the Judgment of the Court in Saigon was adjudged in absence of the Defendants, and it did not appear that the Judgment had become final so it could be enforced and executed accordingly. It was not a final and absolute judgment. The Supreme Court dismissed the Plaintiff's Application.

The aforementioned judgment demonstrates the criteria, which were applied by the Supreme Court to contemplate legal execution in accordance with a judgment of a foreign court, being:

1) The Supreme Court of Thailand adopted the doctrine of international comity and the doctrine of obligation as basic ideas for recognition and execution in accordance with foreign judgments, as appearing in a part of the Judgment that “*it is a question of (private) international law, having doctrines that, as for international comity, one country recognizes and executes a judgment of another country, as if the judgment amount is an outstanding obligation to be lodged to a court.*”;

2) The Supreme Court of Thailand regarded the criteria for recognition and execution in accordance with judgments of foreign courts as follows:

2.1) The foreign court must have jurisdiction over adjudication of the case, and nationalities of the disputing parties are grounds for the foreign court's jurisdiction, as appearing in the Judgment that “*but it is a key issue at the preliminary stage that the court, who adjudged the case referred to be the disputing party, must be a court having competent jurisdiction over*”

*adjudication of the case. In this case, the Judgment, to which is referred by the Plaintiff, was a judgment of the Court in Saigon, adjudging the case where the Plaintiff and the Defendants were subjects the country, in which the Court was situated. Therefore, it is not at issue that the Court in Saigon had the jurisdiction over adjudication of the case referred to by the Plaintiff."*

2.2) The foreign judgment must have become final and absolute, as appearing in the Judgment that "*Moreover, there is another basic requirement that the judgment must be final, have deliberated the cause of action of the dispute between the parties that the debts or responsibilities to each other cannot be further argued over in the Court. If the judgment can be challenged, as for the adjudicating court to reverse the judgment that the debts or responsibilities are no more, then the judgment is not a final and absolute judgment, which can be enforced and executed in accordance with the Judgment of the Court in Saigon referred to by the Plaintiff. In this case, it appears on its own that the Defendants were adjudged in disfavor by default. The cause of action of dispute does not appear in the Judgment by default. As such, under the general jurisprudence, the Judgment can still be rescinded or revoked.*"

3) The Supreme Court of Thailand followed the principle that permitted a disputing party or stakeholder of a foreign court's judgment to apply the judgment (action on judgment) to a Thai court for recognition and legal execution, whereby it was deemed that the judgment is a cause of action or evidence of obligation, which can apply to a Thai court for recognition and legal execution,, as appearing in the Judgment that "*it is a question of (private) international law, having doctrines that, as for international comity, one country recognizes and executes a judgment of another country, as if the judgment amount is an outstanding obligation to be lodged to a court*";

2. The Supreme Court's Judgment No. 93/2476 on the Case of Mr. Leehaoyong Tosi - the Plaintiff versus Mr. W. Shigen Taylor, as the 1<sup>st</sup> Defendant, and Diethelm & Co, as the 2<sup>nd</sup> Defendant, shows us that a foreign court's judgment could be referred to as evidence in a Thai court, in a manner of raising an argument that the issue was already adjudged by the foreign court's judgment on the disputing parties, thereby being a form of recognition in accordance with a foreign court's judgment. However, the said Judgment did not provide with any reason for the Court applying which principle to the case;

3. the Central Juvenile and Family Court's Judgment No. 2351/2548, in this case, the Plaintiff lodged the action to a court in Thailand for affirming the rights acquired from a court in Sweden, which adjudged that the Plaintiff was solely entitled to exercise the parental power. The case concerned application for the Court to recognize the foreign court's judgment only, not to execute the foreign court's judgment. As such, the criteria, which were adopted by the Court in this case, resembled those appeared in the Supreme Court's Judgment No. 585/2461, being: 1. the foreign court must have competent jurisdiction over adjudication of the case; 2. the judgment must have been absolute and final; and, 3, in addition, the judgment must not be contrary to the public order and good morality of the Thai people.

In summary, Thailand does not prescribe a law or rule directly applicable to legal execution in accordance with judgments of foreign courts in civil and commercial matters, and cannot apply Section 3 of Act on Conflict of Laws, B.E. 2481, to filling gaps of the legal matters. But from analyzing the practices in the matter, it is found that there have been the aforementioned 3 Judgments of the Supreme Court, demonstrating the criteria adopted by the Court in Thailand for applying to recognition and execution in accordance with judgments of foreign courts, comprising that: 1) the Court in Thailand adopted the doctrine of international comity and the doctrine of obligation; 2) the foreign court must have competent jurisdiction over adjudication of the case; 3) the foreign court's judgment must have been final and

absolute; and 4) the judgment must not be contrary to the public order and good morality of the Thai people.

However, as Thailand is a country under the Civil Law System, the sources of laws are primarily the Codes and statutes, whereas the Thai Supreme Court's Judgments have a status of an example of application and interpretation of laws, they do not have a status of a law to be followed as a criterion. As such, if, in future, a case arises from facts different from the aforementioned Judgments, the court apply other rules to the case. Therefore, it can be stated that there have not been definite criteria sufficient for applying to recognition and execution in accordance with judgments of foreign courts in Thailand.

The study finds that the ASEAN countries have not concluded any agreement on legal execution in accordance with judgments of foreign courts in civil and commercial matters, and the said issue does not appear in the ASEAN Charter or any session of the conferences among senior leaders of the member countries. Because integration of ASEAN is only at an introductory level, different from integration of the European Union, development of cooperation in ASEAN is clear with respect to economic and trade cooperation, but legal and judicial cooperation is being slowly developed, especially in the matter of legal execution in accordance with rulings of foreign courts, as it can be observed in the data obtained from the interview that, presently, Department of Legal Execution has no reports on applications for execution submitted debtors in foreign countries, unlike cooperation of criminal justice, which is viewed by every country as a matter affecting rights and liberties of its citizens, hence priority is given to conclusion of mutual agreements, for example, the Treaty on Mutual Legal Assistance in Criminal Matters, which is cooperation in cases of transnational crimes, such as to facilitate investigation, prosecution, information sharing and asset confiscation, and the Study finds many problems with and obstacles to establishment of cooperation in the matter of legal execution in accordance with judgments of foreign courts, as follows:

The first issue - the principle of sovereignty, whereas the judicial power is a branch of the sovereignty, it is difficult for one country to relinquish this power to another countries a reason for lack of criteria or clarity in the matter of legal execution in accordance with rulings of foreign courts is that, in a case where the gap is filled as to execute a foreign court's ruling, if the court of the country, who is requested for recognition or execution of the judgment is besought, refused to recognize or execute the judgment, a conflict of exercise of judicial power between the courts may arise. Such a case differs from the arbitration, which is not deemed to be the fundamental judicial power;

The second issue - differences in legal regimes of the ASEAN countries complicate one country aligning its legal regime with that of another country, or concluding a mutual agreement. That is to say - legal regimes among the ASEAN countries vary from country to country, as it is influenced by the Common Law System, the Civil Law System or the Socialist Legal System, depending on the history, politic, religion, society and culture of each country. For example, the Common Law System influences countries, whose legal regimes were originally influenced by the Sharia law, but subsequently derived the Common Law System from Britain, comprising: Malaysia, Singapore and Brunei, because they used to be colonies of Britain. As such, their legal regimes, justice administration, judicial systems and legal proceedings follow concepts of British laws, whereas Myanmar was originally influenced by Hinduism, then codified its law in a form of the Treatise on Law, to which was referred as "Dhammasattha", and, when Myanmar was colonized by Britain, it introduced the Common Law System and the British judicial system, which were practiced in India, to its legal regime. And as for the Philippines, its legal regime combines the canon law of the Catholic Church and the Sharia law. It was influenced by Islam, as its original religion, and subsequently the canon law, and the legal regimes of Spain and the United States of America,

because the Philippines used to be a colony of both Spain and the United States of America for extended periods of times. As a result, the Philippines' legal regime is a mixture of the Anglo-American legal regime, the Roman legal regime, the Spanish legal regime and the Sharia law, whereby the Sharia law appears in family law, the American and Spanish influences appear legislation processes. The Civil Law, as Thailand is a country under the Civil Law System or the system of codified law but was formerly influenced by the British legal regime, which has been long being practiced, hence, Thailand's legal proceedings focuses on an adversarial system, which is a distinctive feature of the Common Law, more than a country under the Civil Law System. Regarding the legal regime of Indonesia, it is influenced by the Sharia Law, Hinduism and customary laws, and also influenced by the European codification system, because it used to be a colony of the Netherlands for long time. The Socialist Legal System - for example, Vietnam has its legal regime basically deriving from a communist regime and the French codification system, because it used to be a colony of France, but, following its independence and unification of North Vietnam and South Vietnam, the Vietnamese legal regime has turned to be clearly influenced by the Socialist Legal System, whereas the Laotian legal regime is based on local customs and traditions, mixed with the French legal regime and a socialist legal regime, likewise, Cambodia, who was originally influenced the Buddhist traditions and Khmer cosmology, but subsequently changed to the Civil Law System after France, and following its independence from France, the Cambodian legal regime has been influenced by the Communist Party, and presently combines more the customary legal regime and the French codification regime with the communist legal regime;

The third issue - the subject matter of substantive laws and procedural laws varies with each country, including laws on obligations for legal execution in civil and commercial matters, proof of loan, forms of contracts, interest rates, etc., and, importantly, inconsistency of at an enforcement level of each country, which differs from one another in details, such as legal execution procedures, terms, processes, properties subject to legal execution, issuance of writs of execution, duties of legal execution officers, confiscation of properties and disposal of properties, as well as discovery of debtors' properties, with respect to which party is responsible for discovering properties of judgment debtors. These are obstacles to and difficulties with the authorities, whose domiciles are not in countries requested for legal execution;

The fourth issue - standards of law and justice administration, which vary with each country, become obstacles to other countries accepting for recognition or execution in accordance with foreign judgments, because it can lead to chances for taking advantage of forum shopping. For example, the plaintiff will choose to institute proceedings in a country, whose law require minimal burden of proof, and after a judgment being passed, then apply the judgment to a court of a country, in which the defendant's properties are situated, for legal execution.

However, this Research focuses on study of necessity for integration of the ASEAN Economic Community and establishment of a legal regime beneficial to trade, investment and development of economic stability in the region, based on measures, which are created for supporting liberalization of trade, investment, and fund and labor movement, provide with mechanisms for eliminating obstacles to trade among each other, as well as reducing differences in laws, rules and regulations among the countries in ASEAN. And when the top priority is primarily given to integration of the ASEAN Economic Community, the principles of sovereignty become less important than interest and needs of the countries and the citizens, as it must be accepted that, in the current economic and social circumstances, one country cannot be isolated and single-handedly solve its own problems, so the country relinquishes a part of its sovereignty to a form of international cooperation in return of common development of the international community.

## Recommendations

The Research suggests that a mutual agreement is to be concluded in a form of the Convention on Legal Execution in Accordance with Rulings of Foreign Courts of the ASEAN Countries, thereby allowing a judgment of a foreign court (Adjudicating Court) to be executed in another country (requested country) in a process similar to legal execution in accordance with a judgment of the requested country, because, presently, the ASEAN countries have not concluded any agreement on legal execution in accordance with judgments of foreign courts among the member states, no ASEAN country has become a party to an international convention concerning legal execution in accordance with rulings of foreign courts at a universal level. As such, for bringing about stability in the justice administration among the member countries and creating mechanisms that promote and support trade and investment liberalization, ASEAN needs to have mechanisms at an international level in place, by drafting the Convention on Legal Execution in Accordance with Rulings of Foreign Courts among the member states, and concluding it as a new agreement at a regional level, within the framework of ASEAN, in order to build a system of recognition and execution in accordance with judgments, which is unified and achieve consistent legal effect, whereby the substantial matters of the convention must contain at least the issues following issues.

**1. Scope of Force:** Provided is that a judgment of one member country's court, which can be executed in its own country, must be enforceable in other member countries, without declaration of enforceability, and, in any case, the subject matter of the judgments of other member countries is prohibited from being reviewed by the requested countries, whereby the scope of force applies to judgments in civil and commercial cases, but does not apply to the categories of cases as follows:

- 1) Cases relating to income taxes;
- 2) Cases of violations of customs law;
- 3) Administrative cases or cases relating to the State's liabilities for the public authorities' commission or omission of actions;
- 4) Cases relating to status of persons;
- 5) Family and heritage cases;
- 6) Bankruptcy cases; and
- 7) Arbitral cases.

**2. Definition:** Prescribed shall be the key definitions, including, but not limited to:

- 1) "Court Judgment" means any judgment, which is adjudged by a court or judicial authorities of a member country, regardless of whatever the judgment is referred to, including a decree, order, decision, ruling or writ of execution, and determination of fee or cost by the judiciary official, and includes any provisional protection measure;
- 2) "Adjudicating Member Country" means a member country, whose court passes the judgment;
- 3) "Requested Member Country" means a member country, who recognizes the referred Court Judgment, or of whom legal execution in accordance with the judgment is besought;
- 4) "Adjudicating Court" means a court, who passed the judgment applying for recognition or execution.

## 3. Application Procedures

1) Prescribed is that, to apply for legal execution in accordance with a member country's Court Judgment, the applicant must support the application with the documents as follows:

- 1.1) A copy of the Court Judgment;
- 1.2) A certificate affirming that the judgment is enforceable, stipulating the subject matter of the judgment, and establishing that the court has jurisdiction over adjudication of the subject matter of the case and the judgment is enforceable in the Adjudicating Member Country, and, if the judgment was passed by the court, whereas the defendant had not been summoned to

the court (judgment by default), stipulating in the certificate that the writ of summons was duly served to the defendant in the course of the formal proceedings;

2) Court Judgment of a member country, which orders payment of money, such as a fine, etc., is enforceable in a Requested Member Country, only if the Adjudicating Court already set the definite amount to be paid.

**4. Proceedings and Conditions for Legal Execution:** Prescribed are that proceedings for legal execution in accordance with a Court Judgment of the Adjudicating Member Country shall be conducted under the law of the Requested Country, and that a judgment of one Adjudicating Member Country is enforceable in another Requested Member Country under the same conditions as for a judgment of the Member Requested Country.

**5. Exceptions to Legal Execution in Accordance with Foreign Court Judgments:**

Provided is that, when a stakeholder applies for legal execution of a Court Judgment, the execution may be rejected on the ground as follows:

1) The subject matter of the Court Judgment is contrary to the public order of the Requested Member Country, or legal execution in accordance with Court Judgment would be contrary to the public order of the Requested Member Country;

2) The Court Judgment is manifestly contrary to the Requested Member Country's public policies;

3) The Court Judgment was passed through unlawful proceedings or by a fraudulent act;

4) The Court Judgment is contrary to the principles of equity, which are considered within the scope of justice only in the proceedings of the Requested Member Country;

5) When the Adjudicating Member Country's court passed the judgment in absence of the defendant or by default, but the defendant proved that it did not receive any document or notice, whereby the document or notice includes a document concerning institution of the case or a document served by the court to the defendant within a period and in a method sufficiently enabling the defendant to argue over the case, unless the defendant was given an opportunity but failed to do so.

**6. Protection Measures for Persons to Be Subject to Legal Execution under the Judgment:** Provided is that, when a person to be subject to legal execution under a judgment submits an application on a ground of exception to execution in accordance with a judgment of a foreign court, the court of the requested party country may issue an injunction of a provisional protection measure in its territory, such as an injunction requiring the execution to satisfy conditions relating to a guarantee, which can be set by the court, or an injunction of suspension of the whole or a part of the execution.

However, upon introduction of a mutual agreement on legal execution in accordance with judgments of foreign courts in civil and commercial cases of the ASEAN countries, recommended is amendment to the Civil Procedure Code, Division IV, thereby adding the provisions as follows:

*“Section..... A judgment, which has become final in a civil or commercial case of a court of a foreign country being a party to the Convention on Legal Execution in Accordance with Rulings of Foreign Courts of the ASEAN Countries, shall be enforceable in Thailand, except:*

*1) The judgment is contrary to the public order or good morality of the people;*

*2) The judgment was passed by a fraudulent act or through unlawful proceedings;*

*3) The defendant did not duly receive the writ of summons, and was not given an reasonable opportunity for arguing over the case.*

*The terms, conditions and methods for the Court to execute the judgment of a foreign court under the first paragraph shall be prescribed in Directive of the President of the Supreme Court.”*

## References

**Civil Procedure Code of Vietnam 2004.**

**Code of Civil Procedure of Cambodia 2007.**

**Council Regulation (EC) No 1215/2012 on jurisdiction and the recognition and enforcement of judgment in civil and commercial matters (recast).**

**Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.**

**Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligation.**

**Court of Justice of the European Union, Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters.**

**Court of Justice of the European Union, Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters.**

**Hague Conference on Private International Law, Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.**

**Hague Conference on Private International Law, Supplementary Protocol of 1 February 1971 to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.**

**Indonesian Code of Civil Procedure.**

Karnjanajitra Saisoonthorn, P. 1992. "Problems of Conditions for Recognition of Judgments of Foreign Courts" **Law Journal Thammasat University** 22 (2): 203-219.

**Law on Civil Procedure of Lao (Amended 2004).**

**Law on Judgment Enforcement 2004.**

**Myanmar Code of Civil Procedure 1908.**

Piwawattanaphanich, P. 2008. **Narratives of International Law.** Bangkok: Thammasat Printing House.

**Reciprocal Enforcement of Commonwealth Judgments Act.**

**Reciprocal Enforcement of Foreign Judgments Act 1996.**

**Reciprocal Enforcement of Judgments Act 1958 (Revised 1972).**

**Rules of Civil Procedure 1997.**

School of Law, Sukhothai Thammathirat Open University. 2012. **Recognition and Execution in Accordance with Judgments of Foreign Courts.** Nonthaburi: Sukhothai Thammathirat Open University Press, 2012, pp. 14-45.

Scoles, E. & Peter, H. 2000. **Conflict of Laws.** 3<sup>rd</sup> ed. Minnesota: West Group.

Sinsupparoek, J. 1988. **Recognition and Execution in Accordance with Judgments of Foreign Courts.** Master of Law Thesis, Chulalongkorn University.

Sriboonroj, A. 2011. **Recognition and execution in accordance with judgments of foreign courts the ASEAN countries.** Master of Law Thesis, Thammasat University.

Sriboonroj, A. 2013. **Do a judgment of one ASEAN country become enforceable in another ASEAN country?.** Bangkok: Winyuchon.

**Uniform Foreign Money Judgments Recognition Act.**

Wongkittirux, C. 1994. **Execution of Thai Court's Judgment on Properties in Britain.** Master of Law Thesis, Chulalongkorn University.