# Recognition and Enforcement of Foreign Judgments among ASEAN Countries

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**Abstract**

The ASEAN Economic Community is the approach of free flow of trades and investments within ten countries. The ASEAN Agreements on this issue facilitate to enhance international trades and investments across ASEAN countries including a freedom of commercial contracts. More trades and investments stimulate to more contracts and commercial transactions; as a result, more lawsuits will be filed. Litigations will be proceeded in different state's courts due to there is not any obstructions. A lawsuit can be filed if it is under jurisdiction rules of that state. Although the proceeding brought to a court; however, when a party who failed a lawsuit and has relocated to another country it would not enable to enforce the court decision in the country where the judgment was not be given. Consequently, the recognition and enforcement of foreign judgment is a questionable consideration. There are no unified rules among ASEAN countries on this subject. Despite the fact that all ASEAN members were signatories of the New York Convention which is the recognition and enforcement of arbitral awards that is not sufficient to the Economic Community. As for another one on the regional level such the European Union (EU), that has the Council Regulation on jurisdiction and the recognition and

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enforcement of judgments. It is undeniable that the recognition and enforcement of foreign judgments is a factor of the security on international trades and investments within the ASEAN region. Thus, it could be taken into account that whether the same unified rules as in the EU should have in the ASEAN. This article discussed the Brussels Regulation, the civil procedure code of countries in ASEAN, and concluded the subject matter that the ASEAN should issue some rules to recognise and enforce judgments of other member states.

**Keywords:** Enforcement of judgment / Recognition of judgment / Jurisdiction / Brussels Regulation / ASEAN

**บทคัดย่อ**

ประชาคมเศรษฐกิจอาเซียนก่อให้การค้าและการลงทุนภายในสิบประเทศสมาชิกเป็นไปอย่างเสรี ซึ่งข้อตกลงอาเซียนภายใต้การค้าเสรีอำนวยให้มีการขยายตัวของการค้าและการลงทุนข้ามประเทศรวมทั้งส่งเสริมเสรีภาพในการทำสัญญาเชิงพาณิชย์อันส่งผลให้เกิดการทำสัญญาและธุรกรรมเชิงพาณิชย์มากขึ้นและสิ่งที่ตามมาคือการฟ้องร้องคดี อนึ่งการฟ้องร้องคดีเรื่องเดียวกันในหลายๆ ประเทศมิได้มีข้อห้าม เพียงถ้าศาลที่รับฟ้องนั้นมีเขตอำนาจก็พอ อย่างไรก็ตามแม้มีการฟ้องร้องกันแต่ถ้าคู่กรณีที่แพ้คดีได้ย้ายถิ่นฐานไปยังประเทศอื่น ก็มักจะเกิดปัญหาที่เป็นคำถามตามมาคือการไม่สามารถนำคำพิพากษาของศาลในประเทศหนึ่งไปบังคับในศาลต่างประเทศซึ่งไม่ได้เป็นผู้ออกคำพิพากษาได้ ทั้งนี้อาเซียนยังไม่มีข้อบังคับหรือกฎหมายเอกภาพในเรื่องการยอมรับและบังคับคำพิพากษาของศาลต่างประเทศ ถึงแม้ว่าทุกประเทศสมาชิกจะให้สัตยาบันแก่อนุสัญญาว่าด้วยการยอมรับและบังคับคำตัดสินของอนุญาโตตุลาการหรืออนุสัญญานิวยอร์กก็ตาม หากแต่ยังไม่เพียงพอสำหรับประชาคมเศรษฐกิจ ซึ่ง

แตกต่างกับประชาคมยุโรปที่มีข้อบังคับของสหภาพว่าด้วยเรื่องเขตอำนาจศาล การยอมรับและบังคับคำพิพากษาของศาลต่างประเทศ อนึ่ง ไม่อาจปฏิเสธได้ว่าข้อบังคับว่าด้วยเรื่องการยอมรับและบังคับคำพิพากษาของศาลต่างประเทศถือเป็นปัจจัยหนึ่งของความมั่นคงในการค้าและการลงทุนภายในประชาคมอาเซียน ดังนั้นจึงควรพิจารณาว่าอาเซียนควรมีข้อบังคับที่เป็นเอกภาพในเรื่องนี้เหมือนเช่นที่สหภาพยุโรปมีหรือไม่ โดยในบทความนี้ได้ศึกษาถึงข้อบังคับบรัสเซลส์ กฎหมายวิธีพิจารณาความแพ่งของประเทศในอาเซียนและสรุปได้ว่าอาเซียนควรมีกฎหมายเพื่อการยอมรับและบังคับคำพิพากษาของศาลแห่งประเทศสมาชิกอื่น

**คำสำคัญ**: การบังคับคำพิพากษา / การยอมรับคำพิพากษา / เขตอำนาจศาล / ข้อบังคับบรัสเซลส์ / อาเซียน

## Introduction

ASEAN member states do not have any unified regulations on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. It is illustrated that if two traders, who have different nationality, concluded some contracts across border and one contracting party breached the contract it subsequently would occur a contract dispute. Thus, when a claimant or a plaintiff brings a lawsuit before a court against a defendant, he will regard the domestic law of the court where a proceeding is seised. The questionable consideration is where the plaintiff should initiate a lawsuit so that there is an advantage and enabling to enforce a judgment. To bear in mind of this issue the domestic law of each ASEAN member will be considered.

Principles of jurisdiction that are under the Thai Civil Procedure Code B.E. 2534 (1991) section 4, 4 bis, and 4 ter stipulates that where a plaintiff or a

claimant enables to take a proceeding in Thai court is the court where the cause of action arise as well as the court where a defendant has a domicile, or a claim which concerns property shall be brought to the court where the property is situated. Any claims that a defendant is not domiciled in Thailand and where the cause of action does not arise in Thailand; however, if the plaintiff is Thai nationality or is domiciled in Thailand, the claim shall be brought to the civil court where the plaintiff is domiciled. This is similar to civil jurisdiction of laws of Malaysia. Pursuant to Article 23 of the Court of Judicature Act 1964, all civil proceedings could be brought before Malaysian court where causes of action arise within the country; or a defendant is domiciled in Malaysia; or the property locates in the country when the dispute relates to that property. This same category of jurisdiction stipulates in the Civil Procedure Code 1908 (Part I) of Myanmar as seen on section 20, as well as the article 8 of the Code of Civil Procedure 2006 of Cambodia. As for the Civil Procedure Code 2015 of Singapore (sec. 5 para. 2.5.3), the plaintiff has a domicile within the country must bring a lawsuit before a Singaporean court. A plaintiff will initiate or send a lawsuit to a foreign court only when Singapore is inappropriate forum on the ground of special circumstances such as the governing law of the transaction and the location of witnesses including substantial injustice. The court will have to be persuaded that other forum is distinctly more appropriate than Singapore to determine the dispute (the Civil Procedure Code 2015 of Singapore, sec. 5 para. 2.5.4). Generally speaking, the principles of civil jurisdiction domicile of either a plaintiff or a defendant also location of property are a standard practice of the matter of jurisdiction. Hence, an action can be taken place at any different countries. This means that the laws of any ASEAN countries do not

obstruct parallel litigations in many different courts. As the illustration can be happened in the ASEAN Economic Community (AEC) that Thai plaintiff sues a defendant before a Thai court according to his domicile, in the meanwhile he files a lawsuit before a Malaysian court on the ground of domicile of a defendant whatever causes of civil dispute; tort, breach of sale contract, consumer contract, employment contract, insurance contract, and etcetera.

If the Thai plaintiff failed a lawsuit in the Malaysian court; however, he would receive an award from the Thai court and the defendant relocated to his home country- Malaysia. The consequent question is that can the Thai plaintiff enables to enforce the judgment of Thai court in Malaysia? Accordingly, it should be discussed that how do the ASEAN member states enforce the court judgment of another member state. The object matter of this article is discussing about clear rules of the EU on jurisdiction and the recognition and enforcement of judgments compare with as of the ASEAN. To point out that no have a unified rule on jurisdiction and recognition of foreign judgments including freedom of litigants in taking lawsuits to more than one court will obstruct an enforcement of foreign judgments among countries in ASEAN. The article divides into 5 parts including this part. The second will be studying of the recognition and enforcement of foreign judgments of ASEAN countries, the third and fourth part will study the Brussels Regulation both the former one (the Brussels I Regulation) and the latest revision (the Recast Brussels Regulation) as a model on the issue of jurisdiction, and the recognition and enforcement of foreign judgment respectively. The last part is a conclusion which proposes to take the harmonisation of the law relating to the enforcement of foreign judgments among ASEAN into account.

## The Recognition and Enforcement of the Judgments of Member States Courts across ASEAN Countries

### Recognition and Enforcement of Court Decision

As for the approach of the recognition and enforcement of other states' court judgments in the ASEAN community, there are not any unified rules on this matter. Typically, there are two methods of enforcement of a judgment in a court of foreign country. The first method is to bring a new action in the foreign country where enforcement is sought. This action will normally be based on the judgment which has been obtained. Secondly, where a reciprocal treaty exists, it may be possible to register the judgment in the foreign country where it is sought to be executed and then to enforce it directly in the same manner as a judgment is given in the court of that country (Ariyanuntaka, 1996).

There are currently no provisions in the Civil Procedure Code or the Conflict of Law Act B.E. 2481(1938) of Thailand which deals specifically with the enforcement of foreign judgments. Thailand has not entered into any relationships, a bilateral agreement or otherwise for the reciprocal enforcement of foreign judgments. Whenever there are no provisions in the Conflict of Law Act of Thailand or in any other laws of Thailand to govern a case of conflict of laws, the general principles of the private international law shall be applied (The Conflict of Law Act B.E. 2548 (1938), sec. 3). However, customary international law is silent on the subject.

As for other ASEAN countries, Indonesia is not a party to any reciprocal treaty on enforcement of foreign judgments. Therefore, foreign judicial decisions are not enforceable in Indonesia but they may be introduced as the evidence in a new action commenced in Indonesia. In Singapore, foreign

judgments can be enforced either by registration under the Reciprocal Enforcement of Commonwealth Judgments Act (RECJA) or the Reciprocal Enforcement of Foreign Judgments Act (REFJA) or by suing on the judgment under common law. RECJA provides for the reciprocal enforcement of judgments from the UK, Australia, New Zealand, Sri Lanka, Malaysia, Windward Islands, Pakistan, Brunei Darussalam, Papua New Guinea and India. Once registered a foreign judgment it may be executed in Singapore as if it was a local judgment (The Civil Procedure Code, 2015, sec. 12 subsec. 2.12.3). However, the judgments from other countries can only be enforced by commencing an action by writ in the Singaporean High Court and can be enforced if it succeeds. It could be stated that most of ASEAN countries are not enable to enforce their judgments in Singapore. As for the Civil Proceedings Code of Vietnam, foreign judgments generally are not enforceable. Vietnamese courts will only consider the recognition of judgments issued by courts in countries that have entered into a judicial agreement with Vietnam or on reciprocal basis. Recently, most of the countries that have entered into a judicial agreement with Vietnam are socialist regimes. Nonetheless, in practice, few judgments issued by courts in foreign countries have been recognised by the courts of Vietnam (Hickin & So, n.d.).

As for Malaysia, pursuant to the Reciprocal Enforcement of Judgment Act 1958 (revised 1972) judgments of a High Court in reciprocating countries can be registered in Malaysia. Upon registration such judgments can be enforceable in Malaysia. Recently, only Singapore and Brunei Darussalam, which are ASEAN countries, are reciprocating countries with Malaysia. In the Philippines even a foreign judgment generally may be recognised and

enforced in the country if it constitutes a final adjudication on a civil or commercial subject matter; issued by an impartial court or agency of competent jurisdiction; is not inconsistent with the country's fundamental principles or public policy; and is not tainted with collusion or fraud. A foreign judgment is presumed to be valid and binding until the contrary is shown. Some scholar opines that the basis for such recognition and enforcement is not reciprocity (Salonga, 1995). Pursuant to section 13 of the Myanmar Civil Procedure Code 1908 states that "A foreign judgment shall be conclusive to any matters thereby directly adjudicated upon between the same parties, or between parties under whom they or any of them claim, litigating under the same title." It means that the foreign judgment is recognised under the Myanmar law when a foreign judgment introduced before the court as a new action except it has not been pronounced by a court of competent jurisdiction; or the proceeding in which the judgment was obtained are opposed to natural justice; or it has been obtained by fraud; or it sustains a claim founded on a breach of any laws in force in Myanmar.

The atmosphere of progress in industries, investments, and international trades in the ASEAN region, harmonisation of the law relating to the enforcement of another member state's judgments within ASEAN members is a much concern. Even though, Thailand and Indonesia have a bilateral agreement concerning judicial cooperation in 1978; however, it is merely cooperation for service of process, judicial documents and mutual assistance in the taking of evidence between two courts. It cannot be extended to the approach of the enforcement of foreign judgments.

**Recognition and Enforcement of Arbitral Award**

It is noteworthy that in the field of enforcement of foreign arbitral awards, Thailand, Cambodia, the Philippines, Indonesia, Malaysia, Singapore, Vietnam, Brunei Darussalam, Lao People's Democratic Republic, and Myanmar have respectively acceded to the New York Convention on the Recognition and Enforcement of foreign Arbitral Award 1958. Hence, whether it should have the same practice as in the enforcement of foreign arbitral award among ASEAN member states on the enforcement of other member states' court judgments, or they should have a unified regulation on this matter specifically.

The illustration of a domestic law of the recognition and enforcement of foreign arbitral award, Thai Arbitration Act B.E. 2545 (2002) will be given as an example. Section 41 para.2 of this Act stipulates that "In the case where the arbitral award was made in a foreign country, the competent court may render judgment for enforcement of the award only when it is governed by a treaty, convention or international agreement to which Thailand is a party and this shall have effect only to the extent that Thailand agrees to be bound thereby." It whether should have the same content as of this Arbitral Act on the matter of the recognition and enforcement of foreign judgments not only Thailand but all ASEAN countries. Ten nations are signatories of the New York Convention they thus comply the same rule as in the New York Convention to their own domestic laws, so the first choice is all ASEAN members should be signatories in some treaties for the recognition and enforcement of foreign judgments. Though, it could be stated that on the matter of enforcement of foreign arbitral awards among ASEAN countries were the same standard and have been recognised. However, the arbitration is an alternative dispute resolution. What does for the

enforcement of foreign judgments among the region? Whether does it enough for the era of ASEAN Economic Community which is a single market, the free flow of trades and investments, including freedom of any commercial contracts across border among a natural person and a legal person of ten countries.

Currently there have two levels of international cooperation on the matter of recognition and enforcement of foreign judgment such a treaty or convention. On the world level there has the Hague Convention but no member state of ASEAN is a signatory. The cooperation in the regional level there have many international agreements. One is the Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters as so called Brussels Regulation. It is a unified regulation of the European Economic Community (EEC) which has amended frequently, also the Lugano Convention which is the cooperation between EEC and European Free Trade Association. As of the organisation of American States (OAS) regulates the enforcement of judgment and arbitral awards in other member states (South America countries) as illustration in the two conventions; one is the Montevideo Convention 1979:- the Inter American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards. Another is the Havana Convention 1928:- the Convention on private international law (Bustamante code). These are results of the cooperation within member states for the security of law among regional union wishing that the same standard of law shall be treated to contracting states. In Asia continent there has the Riyadh Convention 1983 which is judicial cooperation among the Arab States on the recognition and enforcement of judgments and arbitral awards. A research of some scholars analyses that even there have many treaties in the regional level but only the

European Union that alert to associate with the Brussels Regulation whereas the others are not success as it should be (Saisunthorn, n.d.). Thus, the Brussels Regulation is an interesting model to study and shall be discussed. As for the following part will be the rules of jurisdiction and the recognition and enforcement of foreign judgments of the EU Council Regulation both the former one as the Brussels I Regulation and the current one as the Brussels Regulation Recast which is an amended one and has been enforced since January 2015.

**Principles of Jurisdiction of the Brussels Regulation**

There are three distinct processes in private international law, which have led to varying degrees of convergence or harmonisation. Jurisdiction- what court has jurisdiction to hear the cases; applicable law- what law will that court apply; and the recognition and enforcement of foreign judgments (Stewart, cited in Calster, 2013). The classic narrow view of private international law equals with conflict of laws. The rules applied by domestic courts to determine which laws apply to cases that involve people in many different countries or different nationality, or transactions which cross international boundaries.

The border approach includes jurisdiction and enforcement is what are the rules and needs if any for restricting the authority of domestic courts to hear disputes involving foreigners and foreign transactions, and is there should be a binding obligation to recognise and enforce judgments resulting from adjudication in foreign courts?

As unification of the European Union, it is necessary to establish minimum standards ensuring an adequate level of legal aid in cross-border cases throughout the Union. Having judicial protection of individual rights as well as

eliminating of inconsistent judgments that issue from different courts. The council regulation namely the Brussels Regulation on jurisdiction and the recognition and enforcement of judgments on civil matters has been enacted.

**Domicile of a Defendant**

Basically, the scope of application of the Brussels Regulation is that a defendant in the legal proceeding is domiciled in a member state; his nationality is irrelevant (The Council Regulation No. 44/2001, 2002, art. 2). If the defendant is not domiciled in a member state the jurisdiction will be determined in many criteria. The first criterion, the jurisdiction of the courts of each member state shall be determined by the law of that member state when one of the grounds listed in Article 22 (Article 24- the new provision) ((The Council Regulation No.44/2001, 2002, art. 4). This means that a court in a member state shall be determined has exclusive jurisdiction if (i) the property that is taken proceedings situate in the court of the member state, (ii) or the proceedings which have as their objects are the validity of constitution; the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons. The courts of the member state in which the company, legal person or association has its seat. If the defendant is not domiciled in a member state the jurisdiction of the courts of each member state, subject to article 22 and 23, will be determined by the law of that member state. (iii) The proceedings concern with the enforcement of judgments of another member states' courts is the court of the member state, in which the judgment is to be enforced, has exclusive jurisdiction (The Council Regulation No. 44/2001, 2002, art. 22 para 1, 2, 5).

**Jurisdiction by Agreement**

The next criterion is agreement on jurisdiction pursuant to Article 23 of the Brussels I Regulation or Article 25 of the Brussels Recast. The proceedings can be taken before the court of a member state even the defendant is not domiciled in that member state when two parties in the contract have agreed a choice of forum. The former provision of Article 23 stipulates that at least one party normally is the plaintiff must have domicile in one of the member state. However, it is not facilitate the plaintiff to bring a lawsuit in a European court in particular the overseas transaction via online if the parties are not domiciled in Europe. So far, Article 25 in the Recast Brussels Regulation reformed the provision by discarding this requirement of a domicile of one party at least. Currently, Article 25 of the Recast Brussels Regulation superseded Article 23 and the parties have agreed that a court of a member state having jurisdiction regardless of the parties' domicile.

**Jurisdiction by Appearance**

Another criterion, which is regardless of domicile of the defendant, is the circumstance of Article 24 (the former one) and Article 26 (the reformed one):- Jurisdiction by appearance. Although the defendant is not domiciled in the EU but he comes to exist before the court where the plaintiff initiates. The rules of Brussels Regulation shall apply to the procedure because the defendant consents by his appearance. There will be no submission if the defendant merely appears to contest jurisdiction.

**Protect Categories**

The last criterion is the protected feature to a weaker party. Rules on the jurisdiction of courts in civil and commercial disputes are unified on the EU level

as in the Brussels Jurisdiction Regulation. They include jurisdictional grounds for certain categories of disputes that involve weaker parties in particular consumers, employees, insurance policy holders, the insured and beneficiaries under insurance contracts. The European policy itself considers that the weaker categories need to be protected against abuse which would result from standard clause in contracts forced upon them by the contracting party with the upper hand. Thus, the jurisdiction that designs to protect a weaker party is either the courts of the member state in which the other party is domiciled or in the court where the weaker is domiciled when the weaker party bring proceeding against the other party to a contract (The Council Regulation No. 44/2001, 2002, art. 4, 16(1), 19). Meanwhile, an employer or the party of a contract with the consumer may bring proceeding only in the court of the member state in which the employee or consumer is domiciled (The Council Regulation No. 44/2001, 2002, art. 16(2), 20). As for insurance contract, it is similar to a contract of an employment and consumer contract (The Council Regulation No. 44/2001, 2002, art. 9. An unequal bargaining position of parties in commercial legal relationships, as a result this rule will ensure that any advantages presumed or achieved by a contracting party with a dominant bargaining position will remain without legal entitlement and effect. Rules on jurisdiction thus may be adjusted so as to protect the position of a weaker party in legal proceeding.

All cross-border cases have to sue on the right jurisdiction otherwise those of judgments will not be recognised and enforced in other member states. It could be stated that the Council Regulation constitutes a same standard for any civil disputes in the EU member states also having unification of rules relating

the jurisdiction prevents inconsistent judgment. The benefits are on the parties in a lawsuit that do not file a lawsuit in many different courts of jurisdiction. This is because the party who has been given a judgment award from a court of one member state can enable enforce the judgment in another member state. It reduces difficulty and inconveniency for the traders who involve disputes and litigations.

**Recognition and Enforcement of Judgment in the Brussels Regulation**

If a commercial dispute occurs in some ASEAN states and a plaintiff enables to bring a lawsuit before more than one member state's court when there will be a legal connection to the court seised. For example, an Indonesian contracting party sues a Thai contracting party before Indonesian court according to a plaintiff's domicile. In the meanwhile a plaintiff also sues a defendant before Thai court in which the defendant's nationality. This is because the plaintiff has to ensure that he enables to enforce the judgment when he gets an award from the court decision. Though, it does not have the unified regulation of the recognition and enforcement of judgment of a member state's court across ASEAN countries. The questionable consideration is that if a plaintiff brought lawsuits before different two courts and he won the case in Indonesia but failed in Thailand whether he would seek the enforcement of Indonesian civil court's judgment in Thailand where the defendant relocated from Indonesia to Thailand. As for the illustration in a Thai case no.585/2461(1918), the Supreme Court held that the recognition and enforcement of foreign judgment in Thai court was bringing of a new lawsuit based on a final judgment of other state courts. However, bringing a lawsuit in

one court until the court gives a final decision and then takes a new lawsuit based on that final judgment before a court of another country aiming to enforce the first final judgment seems like to prolong the proceeding as well as the procedure in any courts concern time-consuming.

As for the European approach that has unified rule on the recognition and enforcement of judgments across other member states' courts is *lis pendens* rule. Thus, the Brussels Regulation imposes one EU court seised stay proceeding; under the circumstance that same parties and same causes of action are taken before two courts of different EU Member States. The former regulation (the Brussels I Regulation) stipulates that the court second seised must wait until the court first seised has determined whether it has jurisdiction and to continue when the court first seised declines jurisdiction (The Council Regulation No. 44/2001, 2002, art. 27). The intent of the rule was to avoid inconsistent judgment between member states. Typically, this rule facilitated a particular kind of a tactical litigation so called Italian torpedo. Its practical effect was that a party wishing to delay could initiate proceeding in courts other than the court in an exclusive jurisdiction clause to which it had agreed. It often brings a case before Italian court that is well known of very long time proceeding. For example, A- a party of contract sues another party- B in the cause of breaching of contract in Italian court which is not a correct choice of forum as addressed in the contract. A actually wants to prolong a debt that he has to pay to B. B then litigates A in the second court that they have agreed for the same cause of action. As for the former regulation, stipulates that the court second seised has to wait until the Italian court declines jurisdiction. So far the Recast Brussels Regulation resolved this problem. The Recast reformed the *lis*

*pendens* rule so that priority now sits with the court designed in an exclusive jurisdiction clause, without the need to wait for any other member state courts seised earlier in time to consider their jurisdiction first.

To set rules on jurisdiction without rules on the recognition and enforcement of foreign judgment is not a common way to legislate. This is true for good reasons of both levels; jurisdiction and recognition most play together in a harmonious way (Markus, 2012). The domestic laws of the member states of ASEAN have naturally not been coordinated as well as the existing national concepts of recognition and enforcement differ considerably from each other. So far there are no states that do provide for the recognition for another state court's judgment at all. Hence, harmonious rules on jurisdiction and principles on the recognition and enforcement of judgment in civil and commercial matters across ASEAN member states should be determined. It consequently does not have a risk of irreconcilable judgment.

It should be worried about if a judgment was given on a claim in one member state's court would not be entitled to be recognised and enforced in another member state. Whereas such the recognition and enforcement is necessary to ensure that the rights of the claimant are satisfied. The problem on the matter of the recognition and enforcement of foreign judgments across ASEAN should not obstruct the free circulation of capital and assets through the various member states. In my point of view it would be great benefit to ASEAN market and its economic community if its traders and investors could rely on a basic principle on certain standard and criteria through which they may predetermine. Whether a judgment is adopted in accordance with proceeding instituting in one state may be enforced in all ASEAN member states. It is

noteworthy that the Brussels Regulation has developed as the exequatur proceeding to be abolished. It had ever been necessary proceeding for declaring a judgment of a foreign member state enforceable. This means that the court judgment from the EU member state of origin will be enforceable in other EU member states by mere operation of law and without any decision or approval by authorities of the enforcement's state (The Council Regulation No. 1215/2012, art. 36, 39).

Upon the former Regulation, a successful judgment, that creditor seeks to enforce a judgment from a member state's court in the territory of another member state (for instance, where the debtor's assets were abroad), had to follow a formal procedure known as 'exequatur'. This required the judgment of creditor to apply to the court in the member state of enforcement for a declaration of enforceability. A potentially cumbersome and time-consuming process also the detail of procedures varied between member states. The amended Regulation abolished exequatur proceeding aiming cross-border litigation less time-consuming and cost (The Council Regulation No. 1215/2012, Preamble para. 26). Grounds for the abolition of exequatur are the public policy and a refusal of a judgment must be limited (Lightfoot & Hishon, 2015). It is clearly statement in the preamble of the Recast Brussels Regulation that mutual trust in the administration of justice in the Union justifies the principle that judgments are given in a member state should be recognised in all member states without the need for any special procedures. The refusals of recognition and enforcement of judgments must be if (i) such the recognition is manifestly contrary to public policy in the member state addressed; where the judgment was given in an unjust proceeding such as if the defendant was not served with

the document which instituted the proceedings or with and equivalent document in sufficient time and in such a way as to disenable him to arrange for his defense, (ii) if the judgment is irreconcilable with an earlier judgment given in another member state involving the same cause of action and between the same parties in the member state addressed, or (iii) the judgment that is given from an incompetent court according to the jurisdiction conflicts with the one provides to weaker parties in a consumer contract, an employment contract and an insurance contract (The Council Regulation No. 1215/2012, art.45).

## Conclusion

The main principles of the recognition and enforcement of foreign judgment are principle of international comity and reciprocity, and a doctrine of obligation. Generally speaking, a practice of the first principle is a bilateral or multilateral agreement as a form of treaty. Even the recognition and enforcement of foreign judgment is voluntary with full faith and credit; however, one state's court recognises and enforces for court judgments of other states when those foreign courts recognise and enforce the court judgments of that state and vice versa. The last principle- a doctrine of obligation- is the method of the recognition and enforcement of foreign judgments through filing a new lawsuit based on the court judgment of one state before a court of another state in which the enforcement taking place. In other words is that the court judgment is a cause of action in another foreign court.

If the aforesaid principles mirror to the ASEAN it seems like the weight shall be on the last principle. This is because there is an absence of a reciprocal

treaty or agreement among ASEAN member states. To file a new lawsuit on the cause of action of a first court judgment is not workable because it seems like taking proceeding repeatedly and time-consuming would be concerned. No have a rule on mutual recognition and enforcement of foreign judgments among ASEAN would discourage traders and investors who do transactions across border. This is because it does not have a minimum standard to protect rights of execution when parties are on dispute. The unified rules on this subject matter could be established. ASEAN member states have not been contracting states to the Hague Convention or any world level's treaties on the cooperation of recognition and enforcement of foreign judgments. Thus, having unified rules on this subject could be secured trades and investments within the region. It is noticeable that all ASEAN member countries are signatories of the New York Convention (the Convention of the recognition and enforcement of foreign arbitral awards 1958); however, it does not enough for the security of trades and investments within the ASEAN in the long run, because arbitration is an alternative dispute settlement. Additionally, the objective of economic cooperation of the ASEAN is not different from the one of the European Union. Therefore, the Council Regulation or the Brussels Regulation is a good example to study. So far it is nearly two years since pronouncing an official establishment of the ASEAN Economic. There have many upcoming challenges for sustaining and developing the economic community in the long run also the ASEAN region. The harmonisation of the law relating to the enforcement of foreign judgments is the one of the challenges of the ASEAN.

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