

ABLI's "Where in Asia" series

Written by Catherine Shen, Project Manager, Asian Business Law Institute

1. The ConflictofLaws.net previously published a short update on the *Asian Principles for the Recognition and Enforcement of Foreign Judgments* (Adeline Chong ed, Asian Business Law Institute, 2020) which was released in September 2020.
2. Starting in November 2020, ABLI has been following up that publication with a series of concise handbooks written in no-frills languages called "Where in Asia" to address practical questions such as where in Asia judgments from a particular jurisdiction *are entitled to be, have been and cannot be*, recognised and enforced in other jurisdictions. The jurisdictions considered are Australia, Brunei, Cambodia, China, India, Japan, Lao, Malaysia, Myanmar, the Philippines, Singapore, South Korea, Thailand and Vietnam, which corresponds to those discussed in the two flagship ABLI publications on judgments recognition and enforcement: *Recognition and Enforcement of Foreign Judgments in Asia* (Adeline Chong ed, Asian Business Law Institute, 2017) and the *Asian Principles*.
3. For example, included in this "Where in Asia" series is a *Quantitative Analysis of the Enforcement of Foreign Judgments in China* (as of December 2020) which is based on a list on China's cases on recognition of foreign judgments (List) being maintained by China Justice Observer (CJO).
4. While CJO's List looks at both applications to recognise and enforce foreign judgments in China as well as those to recognise and enforce Chinese judgments in foreign jurisdictions, ABLI's analysis focuses specifically on the former category of applications.
5. Based on the List, ABLI identified an uptick in the number of such applications from 2015 to 2020, compared to the previous two decades, with Europe being the region that has exported the most judgments to China.
6. Further, there are two routes for the recognition and enforcement of foreign judgments in China: either pursuant to a bilateral agreement (or "treaty") between China and the country of the foreign court for the

reciprocal enforcement of each other's judgments, or under China's domestic Civil Procedure Law (CPL) in the absence of such an agreement or treaty. Through its analysis, ABLI found that almost three in every five applications to enforce foreign judgments in China were unsuccessful, which is hardly surprising considering that more than half of all applications were made under the CPL route where applicants are required to demonstrate reciprocity. Under Chinese law currently, *de facto* reciprocity is required ie it has to be established that the foreign court whose judgment is before the Chinese court had previously enforced a Chinese judgment.

7. Other key insights revealed by the analysis include the percentage of applications that failed due to lack of reciprocity, the percentage of applications that were unsuccessful on procedural grounds, the percentage of applications that came from Belt and Road countries, etc.
8. The other handbooks available in the "Where in Asia" series include where in Asia can judgments from Australia, China, India, Indonesia, Malaysia, Singapore, Thailand and Vietnam be enforced in the Asia Pacific. Of particular interest may be the position in relation to Indonesian and Thai judgments. Since these two countries generally do not allow the recognition and enforcement of any foreign judgment, how is this stance affecting the exportation of their own judgments abroad? For example, the Indonesia handbook *specifically* discusses the case of *Paulus Tannos v Heince Tombak Simanjuntak* ([2020] SGCA 85, [2020] 2 SLR 1061) where the Singapore Court of Appeal overturned the High Court's decision last year and refused to recognise Indonesian bankruptcy orders on the ground of breach of natural justice.
9. The "Where in Asia" series is available here. ABLI is delighted to offer readers of ConflictofLaws.net an exclusive discount off its entire judgments book collection. Please write to catherine_shen@abli.asia for more information and your unique coupon code.