

Ranking the Portability of ASEAN Judgments within ASEAN

Written by Catherine Shen, ABLI

The Asian Business Law Institute (ABLI) has recently released a free publication titled *Enforcement of Foreign Judgments in ASEAN: Ranking the Portability of ASEAN Judgments within ASEAN*, a derivative publication under its Foreign Judgments Project.

The Association of Southeast Asian Nations (ASEAN) comprises of Brunei Darussalam, Cambodia, Indonesia, Lao, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam. These jurisdictions are of different legal traditions of civil law (Cambodia, Indonesia, Lao, Thailand and Vietnam), common law (Brunei Darussalam, Malaysia, Myanmar and Singapore) and hybrid law (Philippines) tradition. There are two primary hurdles for increasing the portability of ASEAN judgments within the bloc. First, some ASEAN jurisdictions, such as Indonesia and Thailand, have no law that allows foreign judgments to be recognised and enforced. Second, most civil law jurisdictions in ASEAN still have rather rigid requirements on reciprocity. These two hurdles are the main influencers of the ranking.

Three key takeaways can be gleaned from the ranking.

First, Vietnamese judgments claim the crown of being the most portable of ASEAN judgments within ASEAN. They can be enforced in seven out of the other nine ASEAN countries, provided, of course, that the requirements for enforcement under the laws of those countries are satisfied. This is a portability rate of close to 78%. Compared to other ASEAN jurisdictions, Vietnam has the benefit of having bilateral agreements with Cambodia and Lao which allow its judgments to be enforced in the latter two jurisdictions. Cambodia requires a guarantee of reciprocity while Lao PDR requires a bilateral treaty with the relevant country covering the enforcement of each other's judgments before reciprocity is satisfied.

Second, judgments rendered by the other civil law countries of ASEAN come in second place. They can be enforced in six out of nine ASEAN countries.

Third, judgments from the common law countries of ASEAN and the hybrid law jurisdiction of the Philippines are jointly in third place. They can be enforced in five out of nine ASEAN countries, namely in the other common law and hybrid law jurisdictions, as well as Vietnam. Although Vietnam, being a civil law jurisdiction, imposes a condition of reciprocity, it appears relatively easy to satisfy this requirement.

This result may be surprising or even perverse since most civil law jurisdictions, i.e., Cambodia, Indonesia, Lao and Thailand, have comparatively illiberal regimes for the enforcement of foreign judgments (whether due to the rigid requirement of reciprocity or the lack of relevant laws), while the common law and hybrid law jurisdictions in ASEAN have comparatively liberal rules for foreign judgments enforcement. This “asymmetry” is mainly due to the inability of those civil law jurisdictions to return the favour of the more liberal rules of the common law and hybrid law jurisdictions in ASEAN given the state of their laws, namely, the requirement that there be reciprocity between the two countries.

The Enforcement of Foreign Judgments in ASEAN: Ranking the Portability of ASEAN Judgments within ASEAN is available for free and can be downloaded here. ABLI regularly publishes latest developments in the field of recognition and enforcement of foreign judgments in Asia on its website and LinkedIn.