

Dispute Resolution

Singapore Court Judgment Recognised by Vietnam Court of Appeal

Introduction

Conducting business in a foreign country or with foreign counterparts often raises a set of unique considerations. One of these issues is the dispute resolution options available, and whether Singapore court judgments may be enforced in the foreign jurisdiction and vice versa.

This issue is particularly pertinent for Singapore banks and financial institutions, which encounter numerous dealings with foreign parties. This is aptly demonstrated in the case discussed in this Update, which involves a mortgage granted by a Singapore bank to foreign purchasers, and the bank's subsequent efforts at enforcement in the purchasers' home country. Singapore has seen an increasing number of property purchases by foreign individuals, and it is thus a matter of concern whether the foreign jurisdiction will assist in enforcement of judgments.

In a significant development, the Vietnam Court of Appeal in Case No. 222/2016/TLST-DS has recognised a decision of the Singapore High Court. The decision marks another step in the progression of the cooperative relationship between the courts of Singapore and Vietnam, mirroring the close trading and diplomatic relationships between the countries. It opens a new path for the enforcement of judgments, providing mutual benefit for both countries.

Singapore's status as a hub for dispute resolution, both regionally and internationally, has been undergoing constant advancement. As part of this drive, much attention has been paid to the enforceability of judgments. Most recently, the Singapore framework for the reciprocal enforcement of foreign judgments has seen significant enhancement through the Reciprocal Enforcement of Foreign Judgments (Amendment) Act. You may read our earlier Client Update on this development [here](#).

In this Update, we take a closer look at the recent decision of the Vietnam Court of Appeal and the factors which may be relevant in determining when the court will recognise a foreign judgment.

The Singapore Decision

DBS Bank Limited ("DBS") had lent S\$4,963,000 (the "Credit Facility") to refinance the loan of one Mr Bao and one Ms Loan, who were citizens and residents of Vietnam. The Credit Facility was secured by the mortgage of an apartment in Singapore ("Mortgaged Asset"). However, due to repeated failure to pay the amounts due, DBS terminated the Credit Facility.



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DBS brought proceedings in the Singapore courts against Mr Bao and Ms Loan for breach of the Credit Facility. On 25 March 2013, the Singapore High Court issued a decision (“**Decision No. 1129**”) in favour of DBS, ordering inter alia, that:

- (i) Mr Bao and Ms Loan deliver up vacant possession of the Mortgaged Asset;
- (ii) Mr Bao and Ms Loan would pay DBS S\$5,049,703 (with interest) for sums due under the Credit Facility plus interests; and
- (iii) DBS Bank are at liberty to dispose of and/or remove the items and chattels within the Mortgaged Asset.

Decision No. 1129 was sent to Mr Bao and Ms Loan via their representative, whereupon Ms. Loan delivered up possession of the Mortgaged Asset to DBS. Mr Bao and Ms Loan subsequently confirmed their acceptance of the property sale at auction at the price of S\$4,026,000.

However, even after the sale of the Mortgaged Asset, there was still an outstanding debt of S\$1,928,117.70 due under the Credit Facility. DBS thus sought to enforce the remaining judgment debt in Vietnam.

The Vietnam Proceedings

Petition for recognition and enforcement

In December 2015, DBS sent a petition to the Vietnam Ministry of Justice to apply for recognition and enforcement in Vietnam of the balance outstanding under Decision No. 1129. This was then sent to the People’s Court of Ho Chi Minh City (“**Court**”) for a decision.

Singapore and Vietnam have yet to sign any treaty that provides for the mutual recognition or enforcement of judgments from each jurisdiction. Therefore, according to Article 4.2 of the Vietnam Law on Judicial Assistance 2007, the decision of whether to provide judicial assistance would follow the principle of reciprocity.

The relevant factors to be considered under the principle of reciprocity are as follows:

- (i) The necessity and demand of Vietnam for judicial assistance in each specific case or in relation to the country of the requesting party;
- (ii) Whether the enforcement of the foreign decision is contrary to the fundamental principles of Vietnam law, and is appropriate and in accordance with international laws and practices;
- (iii) The relevance of external factors including political, economic, social, and any other forms of impact; and
- (iv) The influence on the rights and interests of the State, concerned individuals and Vietnamese legal entities.

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Decision of the Court

The Court found in favour of DBS on the threshold issues of jurisdiction and time limit, as well on the issue of the application of the principle of reciprocity.

On the issue of jurisdiction, the Court held that it did have the jurisdiction to consider this application. According to Article 27.5, Article 37.1(b), Article 39.2(d) and Article 423.1(b) of the Civil Procedure Code of Vietnam (“CPC”), requests for recognition and enforcement of decisions of foreign courts fall under the jurisdiction of the People’s Court of Ho Chi Minh City.

On the issue of time limit, the Court clarified that the time limit to request the enforcement of civil judgments is three years from the date that the judgment takes legal effect (Article 432 of the CPC). Since DBS had sent its petition to the Ministry of Justice within three years of Decision No. 1129 being issued, the petition complied with the applicable time limit.

Regarding the application of the principle of reciprocity, Mr Bao and Ms Loan contended that they had not been legally summoned to participate in the Singapore proceedings. However, this argument was rejected by the Court.

- (i) The petition and affidavit relating to Decision No. 1129 had been duly delivered to Mr Bao and Ms Loan’s solicitors, who were authorised to receive service of legal process.
- (ii) Further, Ms Loan had subsequently confirmed that DBS could sell the Mortgaged Asset and that they accepted the eventual sale by auction.
- (iii) The delivery of the relevant documents, as well as of Decision No. 1129, was in compliance with the provisions relating to issuance, sending and notification of procedural documents under the COC.

Therefore, the Court applied the principle of reciprocity to recognise and enforce Decision No. 1129.

Concluding Words

The decision of the Vietnam Court grants some assurance for parties entering into contracts with Vietnamese individuals/entities. In the event of a commercial or civil dispute, the issue of enforcement is always vital, particularly where the judgment debtor’s assets are not within jurisdiction. Should there be a need to recognise or enforce a Singapore judgment in Vietnam, parties may take heed of this precedent.

The decision also demonstrates how Singapore court judgments are being increasingly recognised in foreign jurisdictions, even in countries which have no reciprocal agreement or treaty with Singapore. This trend should provide commercial parties with a greater degree of confidence when engaging with foreign counterparties. It should also provide greater impetus for utilising a regional dispute resolution

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forum such as the Singapore International Commercial Court, which hears cross-border commercial disputes.

Parties entering into commercial relationships or involved in commercial disputes with a cross-border element should take note of the recognition issues which may arise. In this regard, Rajah & Tann Asia's Regional Offices are well poised to formulate a comprehensive and tailored strategy for a regional approach to enforcement.

For further queries on this decision, or if you have questions about the enforcement of judgments from or in foreign jurisdictions, please feel free to contact our team below.

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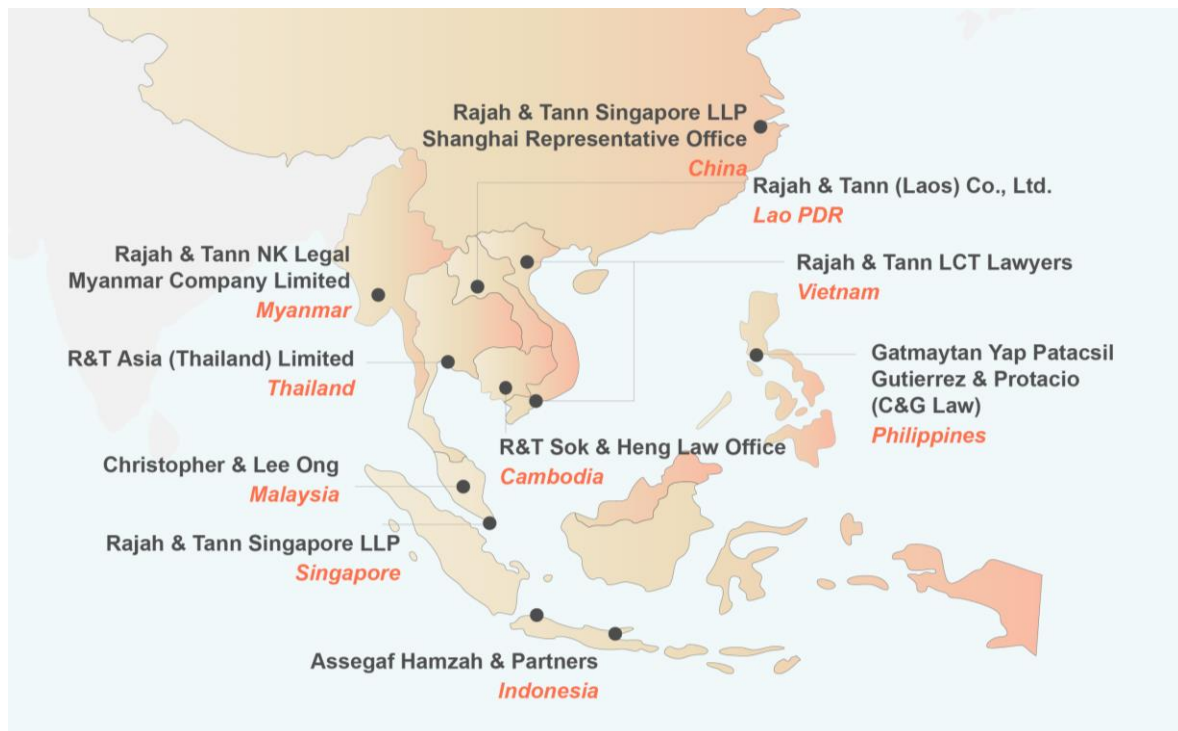
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