

Recognition and Enforcement of Foreign Court Judgments on Maintenance and Alimony^{*}

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Abstract

A judgment of a court in one country sometimes cannot be enforced in another country due to the nature of the judgment itself, for example a judgment granting a divorce, a judgment recognizing the parentage of a child, or a judgment granting the adoption of a child. However, to receive recognition, the foreign court judgment must be a judgment of a court which had jurisdiction to hear that case, and the case must be final. Thailand has no agreement on judicial co-operation for the recognition or enforcement of judgments with any other country. The general principles of private international law on the recognition and enforcement of foreign court judgments result in four forms of practice. The key question thus arises which of these the Thai courts should apply. This article aims to provide an in-depth discussion of the recognition and enforcement of foreign court judgments regarding maintenance or alimony in this regard.

Keywords: Foreign court judgements — Family law — Enforcement of foreign judgements — Alimony — Maintenance

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I. INTRODUCTION

Husbands and wives, and parents and children, have legal obligations to look after each other.¹ If they fail to perform these obligations, the other party has the right to bring a case to court to enforce payment of financial support (“maintenance”). Moreover, if a married couple divorces, the duty to provide financial support may continue: the law requires the court to order payment of a living allowance (“alimony”)² until the recipient either remarries or passes away. The payment of alimony following the breakdown of a marriage acts as protection for former spouses—the recipients are predominantly women—who rely on their ex-partner for ongoing financial support, based on the promise that they would be married for the rest of their lives.

International communications today are fast and convenient. It is a world virtually without borders. It is easy for people to move from one country to another. It may happen that a court in one country makes a judgment ordering one spouse to pay maintenance or alimony to the other, and he or she moves to a different country. For example, suppose that a court in Tokyo makes a judgment ordering a husband to pay monthly maintenance to his wife and children at the rate of ¥500,000 per month. Suppose that the husband then moves to Bangkok and fails to make the payments according to the judgment. Or, to take another example, suppose that a court in San Francisco grants a decree of divorce, ordering the former husband to pay alimony to the former wife in the form of a US\$400,000 lump sum; the ex-husband moves to Chiang Mai and refuses to pay. In these situations, how can the wife and ex-wife claim for the payment of “maintenance” (support between husband and wife, or between parents and children) and “alimony” (financial support after the end of a marriage) respectively in accordance with these judgments of foreign courts?

It is common knowledge that each country has sovereignty over its own territory: legislative, executive, and judicial powers. These sovereign powers can only be exercised within the borders of the country. A court judgment is a decision or order of a person who holds judicial power. Therefore, it has effect only in the country in which that court has jurisdiction. However, since the courts of each country generally use similar principles, methods and reasoning in deciding cases, and differ only in the language that they use, jurists have found the means for judicial co-operation between different countries across the globe through rules of international law: the principle of reciprocity, by which one country hopes that other countries will treat it in the same way as it treats them; and the principle of international courtesy (comity), by which one country conducts itself towards other countries with good will, i.e., in a spirit of friendship.

A court judgment may have an effect in another country in two ways: By way of acceptance/recognition (II.) and enforcement (III.).

¹ Civil and Commercial Code, ss 1461 para 2, 1563, and 1564.

² Civil and Commercial Code, s 1526.

II. ACCEPTANCE (RECOGNITION) OF A FOREIGN COURT JUDGMENT

In some situations, a judgment of a court in one country cannot be enforced in another country due to the nature of the judgment itself. For example, a judgment granting a divorce, a judgment recognising the parentage of a child, a judgment granting the adoption of a child, or a judgment dismissing a claim and permitting the defendant to use the dismissal as a defence against the same claim brought by the claimant in another country. In such cases, recognition of the court judgment may be made directly. To give an example, suppose that a couple marry in one country, file for divorce in a second country—the courts of which grant the divorce—and the former husband remarries in a third country. In this situation, the former husband's second marriage should be deemed a valid marriage: a court in the third country must recognise the judgment of the court in the second country, which granted the divorce terminating the first marriage.³

However, to receive recognition, the foreign court judgment must be a judgment of a court which had jurisdiction to hear that case, and the case must be final. If so, a court will recognise the foreign court judgment fully and without any conditions ("full faith and credit").⁴ However, this will not be the case if it is merely an order of a body which is not a court ("non-judicial procedure"), such as divorce by a method under Jewish law, or by the talak method under Islamic law. For example, if a husband verbally divorces his wife by the talak method in a foreign consulate in the USA, the US courts will not recognise this divorce.⁵

III. ENFORCEMENT OF A FOREIGN COURT JUDGMENT

In some situations, a judgment of a court in one country must be enforced using a judgment of a court in another country. For example, suppose that a court in Los Angeles in the state of California makes a judgment ordering a Thai husband to pay maintenance to his American wife of US\$6,000 per month, but the husband moves to Thailand and refuses to make the payments. There are four forms of practice that apply to the payment of debts relating to foreign court judgments in situations such as this:

Form 1: It is held that the foreign court judgment has the same effect in the country as a judgment of a domestic court. The domestic court issues an order enforcing the foreign court judgment without the need to reintroduce the case for consideration.

³ *Lawrence v Lawrence* [1985] Fam 106.

⁴ *Travers v Holley* [1953] 3 WLR 507.

⁵ *Aleem v Aleem*, 404 Md 404, 947 A 2d 489 (2008).

Form 2: It is held that the foreign court judgment has the same effect in the country as a judgment of a domestic court. However, the domestic courts are not always required to enforce such judgments: they may introduce the case for consideration as to whether the judgment was made in bad faith or unlawfully.

Form 3: The domestic court issues an order enforcing the foreign court judgment by virtue of the principle of international courtesy (the doctrine of comity).

Form 4: It is held that the foreign court judgment has effect in the country, but only as evidence of the existence of a debt. In order to enforce this debt, the claimant must bring a new case and adduce the foreign court judgment as evidence, as though the debt arose as a result of that foreign court judgment.

These four forms of practice are merely guidelines: they have no binding effect, unlike that achieved by international treaties between states. For this reason, many countries with thriving international trade have established treaties for international co-operation in litigation, for the recognition and enforcement of foreign court judgments in civil and commercial cases.

As long ago as 1902 there was the Hague Convention, dated 12 June 1902, concerning marriage agreements, Article 5 of which allowed foreigners to file for divorce or abandonment in a court with jurisdiction where the spouses had nationality or a court with jurisdiction where the spouses were domiciled. Article 7 provided for judgments of foreign courts with jurisdiction to decide such cases to have effect in other countries that were signatories to the Convention. In 1905 there was the Hague Convention on the effects of marriage, and in 1954 there was the Hague Convention concerning judicial co-operation, specifying methods for proceedings and deciding cases. The latter Convention required signatory states to use the same procedures for the enforcement of foreign court judgments. In 2012, the European Union adopted the Brussels Convention (and subsequent Regulation) on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters,⁶ for mutual enforcement of judgments in civil and commercial cases of courts in countries within the European Union.

However, for Thailand as yet there is no agreement on judicial co-operation for the recognition or enforcement of judgments with any other country. The Conflict of Laws Act BE 2481 (1938) has no provision concerning the recognition or enforcement of foreign court judgments. Section 3 provides only that whenever there is no provision in the Act or in any other law of Siam to govern a case of conflict of laws, the general principles of private international law shall apply. However, the problem is that the general principles of private international law on the recognition and enforcement of foreign court judgments result in the four forms of practice described above. Which of these should the Thai courts apply?

⁶ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2012] OJL351/1 (Brussels I recast).

On this issue, there was a Thai Supreme Court judgment in the year 1918,⁷ which laid down the rule on enforcing monetary debts in civil and commercial cases, regarding the enforcement of a judgment of a Vietnamese court, made in similar terms to an English decision,⁸ as follows:

Through mutual respect between nations, one country will consent to make an order of enforcement according to the judgment of a court of justice in another country as if the amount of money according to that judgment were an outstanding liability for which a claim is being brought. However, the court which made the judgment cited must be a court which had jurisdiction to hear the case, and the judgment given must be final. Giving an opinion on the substance of the dispute between the parties, as to whether there is a debt or liability owed, would result in the parties resurrecting the dispute: the parties cannot litigate the case in court again. Rather, in enforcing the judgment of a foreign court, the person who intends to adduce that judgment must bring a claim to a Thai court requesting the Thai court to make a judgment in accordance with the foreign court judgment before the case can be enforced in Thailand, and that person is the claimant in this matter.

Therefore, the Thai Courts of Justice follow this approach, or use Form 4 as above.

In 2012, the Thai Supreme Court reaffirmed the principle on enforcing foreign court judgments in a family case concerning maintenance payments for children.⁹ It required the claimant to bring a case in a Thai court, for the Thai court to make a judgment in accordance with the foreign court judgment, before it would enforce the child maintenance payments. Its opinion was as follows:

The claimant and defendant made a compromise agreement in the Family Court of the State of New York. Clause 6 of the agreement provides that the agreement is binding on the claimant, the defendant and minor children pursuant to Section 516 of the Family Law. It appears that the intention of the claimant and the defendant, who were the parties, was to use the law of the United States of America. By virtue of Section 13 paragraph 1 of the Conflict of Laws Act BE 2481 which provides that “the question as to what law is applicable to the essential elements or effects of a contract is determined by the intention of the parties . . .” read with the compromise agreement, which does not conflict with public order or good morals of the Thai people according to Section 5 of the Conflict of Laws Act BE 2481, the Thai courts may therefore determine the case according to the compromise agreement.

The claimant and defendant made an agreement or condition that the defendant will be liable under the compromise agreement if the results of tests under the specified method confirm that the defendant is the father of the children who are minors. The agreement or condition is a part of the compromise agreement which, in Clause 1, refers to test results that reveal that the defendant is the father of the minor children with a probability of at least 95%. If this is the case, the defendant shall be liable for child maintenance payments and various other expenses under the

⁷ Thai Supreme Court Judgment 585/2461.

⁸ *Salvesen v Administrator of Austrian Property* [1927] AC 641 (HL).

⁹ Thai Supreme Court Judgment 15066/2555.

compromise agreement. Clause 7 grants jurisdiction to the Family Court of the State of New York and states that the compromise agreement and any other orders related to it will be enforceable in the appropriate court of any foreign country.

Since that court made an order stating that the defendant is the father of the minor children, after the results of a paternity test confirming this, the defendant must be bound according to the compromise agreement and the court order. The claimant thus has the power to bring a claim against the defendant to comply with the compromise agreement and the court order.

Therefore, judgments of foreign courts on maintenance or alimony may not be enforced directly in Thailand. A foreign court judgment creditor must bring a case to the Juvenile and Family Court, requesting a judgment to be made according to the foreign court judgment before the decision will be enforced in Thailand. Ultimately, the judgment that will be enforced will be the judgment of the Juvenile and Family Court, or of the Court of Appeal for Specialist Cases or the Supreme Court itself.

For example, suppose that the Vientiane City Court, in Laos, makes a judgment granting a divorce to a Laotian couple, and orders the husband to pay alimony to the wife of 2,000,000 kip per month. The husband moves to Nong Khai province [in Thailand] and does not make alimony payments to the wife. In this situation, the wife must bring a case to the Juvenile and Family Court of Nong Khai province to enforce the payment of alimony by the husband at the rate of 7,000 baht per month, which is the equivalent of 2,000,000 kip. The judgment of the Vientiane City Court (foreign judgment), ordering the former husband to pay alimony to the former wife, is now converted into the judgment of the Juvenile and Family Court of Nong Khai province (domestic judgment); it is no longer the judgment of the Vientiane City Court.

Family law throughout the world differs according to the customs, traditions, beliefs, and religions of the people in each country. Some countries accept betrothals and dowries, but other countries do not. In countries where the majority of the population is Muslim, the law may allow men and women to marry at a young age; a man may have several wives; divorce can be made verbally, whereby the husband can say that he is divorced from the wife. However, countries where the majority of the population is Christian do not accept this method. Some majority Christian countries allow men to marry men and women to marry women; in most other countries, such marriages are not accepted. Some countries permit traditional marriages that differ from the law.¹⁰

Family disputes in every country are difficult, complicated, distinct, and different from disputes concerning juristic acts, contracts, debt, tort, or ordinary commercial business. In countries with customary law, or common law systems, such as the USA, the enforcement of foreign court judgments in family disputes is not within the scope of enforcement of the general law concerning civil or commercial matters.

¹⁰ *Xiong ex rel Edmondson v Xiong*, 2002 WI App 110, 255 Wis 2d 693, 648 NW 2d 900 held that a traditional Hmong marriage in Laos near the end of the Vietnam war was a valid marriage, even though not conducted in accordance with the conditions under the law of Laos.

The Uniform Foreign-Country Money Judgments Recognition Act 2005¹¹ clearly stipulates that it does not include proceedings according to judgments for divorce, recovering maintenance payments or other judgments from proceedings concerning family relations. In countries in the European Union that use written law, or civil law countries, family proceedings are also excluded from the scope of enforcement of general civil and commercial cases under the Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters.¹² Likewise, judgment creditors in family law cases from foreign courts in various countries throughout the world must rely on the international law doctrine of comity¹³ for recognition and enforcement of foreign court judgments concerning divorce or the management of money and family assets to achieve justice domestically.

The country which has the longest line of judgments for recognising and enforcing foreign court judgments in family cases is the USA, which is made up of 50 states, each with its own separate family law and family courts. The judgment of each state court is directly enforceable only in its own state and cannot be enforced in other states. Other states consider such a judgment to be a foreign court decision (foreign decree). Therefore, suppose that a court in the state of New York grants a decree of divorce and orders the husband to pay monthly alimony to the wife, but the husband does not pay and moves to the state of Nevada. In such a case, the wife must bring a claim to a Nevada court to enforce the husband's alimony payments in accordance with the New York court judgment. The Constitution of the United States provides that each state must give full faith and credit to every other state's court proceedings.¹⁴ Therefore, the court in the state of Nevada must recognise and enforce the judgment of the court of the state of New York.

Regarding the common law principles which the courts in the USA—and other countries such as England, Canada, and Australia which use common law—apply in relation to the recognition and enforcement of foreign court judgments, the following conditions apply:

(1) The foreign court judgment must be the judgment of a court that has jurisdiction over the case according to the principles of conflict of laws. That is, since the judgment is in a case concerning a debt against an individual (*in personam*), the parties must be present in that jurisdiction, whether residing there (residence) or just entering it temporarily.

(2) The foreign court judgment must be final and conclusive. If the foreign court judgment is subject to change, such as a default judgment where the defendant has the right to request the court to reconsider the case within a specified period of time, it is not deemed final and conclusive. A judgment which orders the payment of

¹¹ Uniform Foreign-Country Money Judgments Recognition Act 2005, s 3(b)(3).

¹² Brussels I recast (n 6).

¹³ *SB v WA*, 38 Misc 3d 780, 959 NYS 2d 802 (Sup Ct 2012). The New York City Court enforced a judgment of the court of Abu Dhabi awarding payment in a family case in the amount of 250,000 mar by virtue of the principle of international comity.

¹⁴ US Constitution, art IV s 1. "Full Faith and Credit shall be given in each State to the Public Acts, Records and Judicial Proceeding of every other State."

maintenance or alimony as a lump sum which is not subject to alteration or cancellation is considered to be a final and conclusive judgment. A judgment ordering payment by instalments over time (periodic sum) is also considered a final and conclusive judgment, even if the law of that foreign jurisdiction grants the court the power subsequently to alter the amount of the payments.¹⁵ The value of the maintenance or alimony according to the judgment is a judgment debt (debt of record), which is enforceable as long as it has not been altered and which may only be altered as to the amount of money which must be paid in the future.

For example, suppose that the Los Angeles court makes a judgment ordering a husband to pay maintenance to his wife and children at the rate of US\$6,000 per month starting in February. The husband does not pay the maintenance and flees to Bangkok, and the wife brings a claim to the Juvenile and Family Court in August. In this case, she is entitled to claim for maintenance payments for herself and her children for the period from February to July, together with interest¹⁶ calculated at the rate of 5 percent per year,¹⁷ and for maintenance payments monthly from August onwards. However, maintenance payments for a wife and children which a court orders in divorce proceedings that are pending (maintenance *pendente lite*) are not considered a final and conclusive judgment,¹⁸ since they are still under the consideration of the court which made the order. Therefore, these orders cannot be enforced by bringing a case to the Thai court.¹⁹

(3) The enforcement of the foreign court judgment must not contravene the law, public order or good morals of the people (contrary to public policy). The method of adjudicating family cases in foreign courts may differ from that in Thai courts. For example, a family court in a foreign jurisdiction may not have an associate judge sitting in consideration of the case as in a Thai court. This is not considered a contravention of public order or good morals of the people. But if a court in London makes a judgment granting a decree of divorce to a female couple who married under English law, and orders one spouse to pay monthly alimony to the other at the rate of GBP 4,000, the judgment of the London court contravenes Thai law because Thai law specifies as the conditions of a valid marriage that the spouses must be male and female. A female-female marriage in England does not confer the status of spouses in Thai law.²⁰ Since there is no marriage, there can be no divorce and no alimony according to the judgment of the London court that can be recognised and enforced in Thailand.

Moreover, suppose that a foreign court hands down a judgment granting a husband a divorce from his wife according to the husband's petition for divorce on the ground of the wife's adultery, but orders the husband to pay monthly alimony to the

¹⁵ *Caples v Caples* 47 F 2d 225 (5th Cir 1931); *Sistare v Sistare*, 218 US 1, 30 S Ct 682, 54 L Ed 905 (1910); *Barber v Barber*, 323 US 77, 65 S Ct 137, 89 L Ed 82 (1944).

¹⁶ Compare with judgment of US Supreme Court *Barber v Barber*, 62 US 582, 16 L Ed 226 (1858).

¹⁷ Civil and Commercial Code, ss 7 and 224 para 1.

¹⁸ Civil and Commercial Code, s 1530.

¹⁹ Compare with *Kelly v Kelly*, 121 NJ Eq 361, 189 A 665 (1937).

²⁰ Thai Supreme Court Judgment 2887/2563.

wife. If the husband refuses to make alimony payments and moves to Thailand, the wife cannot request the court in Thailand to enforce the alimony payments against the husband because this contravenes Thai law.²¹ The court can make a judgment ordering the payment of alimony only from the party at fault.

However, at present, in several countries there is a trend towards a change in the principles for ordering alimony payments on divorce. Previously, a spouse who was at fault did not have the right to receive alimony payments. Now, the payment of alimony is determined without regard to whether the relevant party is at fault, to compensate former spouses who do not have the means to find sufficient income to maintain their living standards. The USA accepted this principle into its law in 2002.²² It should be considered whether Thai family law should be amended in line with such new principles when an opportunity presents itself.

Foreign laws may recognise polygamy, such as Malaysian family law which allows an Islamic man to have four wives. Suppose that a court in Kuala Lumpur makes a judgment ordering a husband to pay monthly maintenance to his second wife of RM 3,000, but the husband does not do so and moves to Songkhla province [in Thailand]. In such a case, the second wife has the right to bring a claim to the Juvenile and Family Court of Songkhla province, requesting the court to enforce the maintenance payments against her husband in accordance with the judgment of the Kuala Lumpur court. This does not contravene the law or good morals of the people, because Thailand has a law permitting an Islamic husband in the four southern border provinces to have multiple legal wives.

Moreover, a foreign court may hand down a judgment ordering the transfer of assets, such as land or other assets which are in Thailand, by way of maintenance or alimony payments instead of money. Even though Thai law provides that maintenance must be paid in money by periodical payments, the law has an exception allowing the parties to agree to payment by other means or methods.²³ In the absence of agreement, where there is special cause, at the request of one of the parties and if it deems it appropriate, the court shall order maintenance payments by other means or by other methods, with or without payment in cash. This also applies to alimony payments, *mutatis mutandis*.²⁴ Therefore, suppose that a court in the city of Reno, in the state of Nevada, USA, makes a judgment ordering a husband to pay maintenance to his wife and children by transferring his condominium and fishing boats, registered in Thailand, to his wife and children. If the condominium and fishing boats are in Bangkok, and if the husband does not obey the judgment and moves to settle in Bangkok, his wife can bring a claim to the Central Juvenile and Family Court to enforce the judgment of the court in Reno, since Thai law has a provision allowing the payment of maintenance or alimony by way of assets instead of, or in combination with, cash.

²¹ Civil and Commercial Code, s 1526.

²² Principles of the Law of Family Dissolution 2002, ch 5.

²³ Civil and Commercial Code, s 1598/40.

²⁴ Civil and Commercial Code, s 1526.

(4) The foreign court judgment must require the payment of a definite amount of money (a fixed sum), not leaving it in the court's discretion to determine the fixed sum later. For example, suppose that a court hands down a judgment ordering a father to pay maintenance to his minor children of not more than (to such an extent) US\$5,000 per month, the amount to be determined by the court each year. The obligation under a judgment with an indeterminate amount such as this does not give rise to a right for the minor child (no absolute or vested right existed) to receive maintenance payments from the father. Thus, if this came to a Thai court, the court would not be able to enforce the payment of maintenance by the father to the children.

However, if the foreign court judgment debt is a fixed sum, the claimant may request the court to order payment of the debt either in foreign currency for the amount specified in the foreign court judgment or in Thai currency at the exchange rate on the day on which the claimant brought the case to the Thai court. For convenience in execution of the judgment, the claimant should seek an order to pay the debt in Thai baht, to reduce the risk of currency fluctuations, such as in the case of the Myanmar kyat or the Lao kip which have a tendency to depreciate, etc.

In order for a Thai court to recognise and enforce a foreign court judgment regarding maintenance or alimony, which will be by way of a judgment of the Thai court itself, the Thai court must enforce accurately and completely every order of the foreign court judgment, and in particular the amount of maintenance or alimony. As to whether Thai court may increase or decrease the amount of maintenance or alimony from that in the foreign court judgment, this issue has arisen in the USA.

The matter began in a court of the state of New Jersey, which made a judgment ordering a husband to pay unpaid alimony in the amount of US\$7,840, US\$1,000 in lawyers' fees, and weekly alimony to the wife of US\$80 from the date of the judgment, and issued a writ of execution stating that the judgment debt created a lien over the husband's land. The husband disobeyed the judgment and moved to the state of New York. The wife sued the husband in a court in the state of New York to compel the husband to comply with the judgment of the New Jersey court.

The New York court made the following orders against the husband: first, to pay to the wife the unpaid alimony and lawyers' fees in the amounts specified in the judgment of the New Jersey court; second, to pay alimony accrued since the date of the judgment of the New Jersey court; third, to pay weekly alimony to the wife at the rate of US\$80, calculated from the date of the New York court judgment; and finally, to give a bond in the sum of US\$100,000 to secure the payments according to the judgment. The husband appealed to the Appellate Division. The Appellate Division modified the judgment of the New York court, ordering the husband to pay US\$8,840 to the wife, the amount equal to the unpaid alimony as assessed by the New Jersey court together with lawyers' fees of US\$1,000. Both husband and wife appealed to the Court of Appeals, which affirmed the judgment.

The US Supreme Court²⁵ later affirmed the ruling of the Court of Appeals, reasoning that the order for the payment of US\$8,840 was a fixed sum, already due, and the judgment of the lower court was properly restricted to that scope. Regarding the payment of alimony in the future, this was subject to the discretion of the Chancery Court of the state of New Jersey which might at any time alter it and was not a final judgment for a fixed sum. The provision for bond sequestration, receiver and injunction, being in the nature of execution and not of judgment, could have no extraterritorial operation; the actions of the courts of New York in these respects depended on the local statutes and practice of the state, and involved no Federal question.

In summary, in the USA, the principle is that a court of one state will not alter the amount of a maintenance or alimony payment which a court of another state has determined. However, it does have the power to change execution of judgment orders of a court of another state, according to its own state's law and practice. The Thai courts are likely to adopt the same principle as the state courts of the USA in not altering the amount of maintenance or alimony which a foreign court has determined.

However, where a Thai juvenile and family court makes a judgment ordering the payment of maintenance or alimony according to the amount determined by a foreign court, can the parties subsequently request the Thai court to make an order amending the judgment? Under Thai law the court has the power to order changes to amount of maintenance²⁶ and alimony²⁷ payments, if the circumstances, income or status of the parties have changed, by ordering the cancellation, reduction or increase of the amount of maintenance or alimony. Thus, the juvenile and family court has the power to alter its own judgments by reducing or increasing the amount of maintenance or alimony which was originally determined. In addition, if a minor child receiving maintenance reaches the age of majority and does not have a disability or an inability support him- or herself, or if a divorced spouse receiving alimony remarries, or if one of the divorced spouses passes away, the right to receive maintenance or alimony will end.²⁸ The court may also cancel the order to pay maintenance or alimony. However, in the case of a judgment which orders the payment of alimony as a lump sum, the parties cannot request the court to alter the order. This is because, in calculating alimony as a lump sum payment, the future expectations of the parties must be taken into consideration at the time.

When bringing a case to a Thai court for recognition and enforcement of a foreign court judgment concerning maintenance or alimony, whether claiming for the payment of accrued and unpaid instalments of maintenance or alimony together with the payment of future instalments (future payments), the status of the claim is as an initial claim for maintenance or alimony made to the juvenile and family court. Therefore, the claim benefits from special rules in court procedure, different from

²⁵ *Lynde v Lynde*, 181 US 183, 21 S Ct 555, 45 L Ed 810 (1901).

²⁶ Civil and Commercial Code, s 1598/39.

²⁷ Civil and Commercial Code, s 1526.

²⁸ Civil and Commercial Code, ss 1564 and 1528.

general civil cases as specified by the law. The claim is to be filed in the court of the area where the defendant is domiciled,²⁹ being the place where that person has his or her principal residence.³⁰ If the domicile is not evident, it is deemed to be the place of residence.³¹ If a person does not have a habitual residence, the place where he or she is found is deemed to be his or her domicile.³² Therefore, the Juvenile and Family Court in Tak province has the same chance as the Central Juvenile and Family Court of receiving a claim if the defendant is not in Bangkok but in Mae Sot district in Tak province. In the filing of a claim, including for proceedings to determine any matter, there is an exception to the requirement to pay court fees or costs.³³ In the enforcement of a court judgment or order for the payment of maintenance or alimony, the court has the power to issue an execution order enforcing payment out of the income of a defendant who is an employee of or works for a private agency, regardless of whether it is allowance, salary, wages, pension, compensation or grants, and even if it is a small amount of money, less than 10,000 baht per month. Regarding defendants who are government officials, staff or employees in government agencies, income includes monthly salary, wages, pension, annuity, or other income of the same nature, regardless of the amount of maintenance or alimony the payment of which is being enforced. The court may appoint an executing officer or any person whom the court considers appropriate to conduct enforcement proceedings, and there is also an exemption for court costs in enforcement proceedings.³⁴

Today, the global society is truly in a world without borders. There is a metaverse, synergy in commerce, and a new normal in the wake of the COVID-19 pandemic. Business is carried out electronically (E-commerce) online, easily from one country to another. There are digital assets and digital money that can move conveniently and quickly to every corner of the world, along with the movements of populations. The institution of the family has new forms: whereas before only male and female could register a marriage as husband and wife, it became accepted for male and male, female and female, or male and female couples to register as civil partners, forming a family. The Thai Juvenile and Family Courts need to find innovations to protect families according to the new ways of life of the global society, by expanding the principles of international comity to recognise and enforce foreign court judgments concerning maintenance and alimony for confidence in justice. These innovations may include special privileges different from enforcing ordinary monetary judgments in other civil cases, in accordance with the principle that where the law establishes a right, it must also have the means of enforcing that right. The judgment of a court with jurisdiction over the Pardang Besar area in Malaysia should be recognised and enforced by a court with jurisdiction over the Sadao area in Songkhla

²⁹ Civil Procedure Code, s 4(1) read with Juvenile and Family Court and Procedure Act B.E. 2553 (2010) s 6.

³⁰ Civil and Commercial Code, s 37.

³¹ Civil and Commercial Code, s 39.

³² Civil and Commercial Code, s 40.

³³ Juvenile and Family Court and Procedure Act 2010 (n 29) s 155.

³⁴ Juvenile and Family Court and Procedure Act 2010 (n 29) s 154.

province [in Thailand]. There must be no area in which there is no law—a “no man’s land.” National borders must not be a refuge for persons who have neglected their duty to properly help and support their families in accordance with the promises made upon marriage: to live together as husband and wife until life’s end. This is a legal and moral duty with no exceptions.

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