



REDUCTION IN LITIGATION COSTS IN CIVIL CASES BY MAKING  
AVAILABLE LAWS ON THE RECOGNITION AND ENFORCEMENT OF  
FOREIGN JUDGMENT: A CASE STUDY OF LAO PEOPLE'S DEMOCRATIC  
REPUBLIC AND THAILAND

PRAMUAL CHANCHEEWA

A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF  
THE REQUIREMENTS FOR DOCTOR DEGREE OF PHILOSOPHY  
IN LOGISTICS AND SUPPLY CHAIN MANAGEMENT

FACULTY OF LOGISTICS

BURAPHA UNIVERSITY

2025

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ว่าด้วยการรับรองและการยอมรับบังคับตามคำพิพากษาศาลต่างประเทศ  
(ศึกษากรณีสาธารณรัฐประชาธิปไตยประชาชนลาวและประเทศไทย)



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คุณฎีนิพนธ์นี้เป็นส่วนหนึ่งของการศึกษาตามหลักสูตรปรัชญาดุษฎีบัณฑิต  
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2568  
ลิขสิทธิ์เป็นของมหาวิทยาลัยบูรพา

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KEYWORDS: FOREIGN JUDGMENTS/ RECOGNITION AND  
ENFORCEMENT/ REDUCTION IN LITIGATION COSTS/  
ADAPTATION OF ABC

PRAMUAL CHANCHEEWA : REDUCTION IN LITIGATION COSTS  
IN CIVIL CASES BY MAKING AVAILABLE LAWS ON THE RECOGNITION  
AND ENFORCEMENT OF FOREIGN JUDGMENT: A CASE STUDY OF LAO  
PEOPLE'S DEMOCRATIC REPUBLIC AND THAILAND. ADVISORY  
COMMITTEE: NAKORN INDRA-PAYOONG, Ph.D. 2025.

Thailand does not have a law generally applicable to the recognition and enforcement of foreign judgments, causing repetition of legal costs when the winning plaintiff in a foreign court enforces the foreign judgment against the defendant's assets in Thailand; this contrasts with the Lao People's Democratic Republic (Lao PDR) which has improved the Civil Procedure Act and introducing the new versions (2012) to recognize and enforce the foreign judgments. To demonstrate and prove, in term of monetary and numerical values, the legal hypothesis that litigation costs could be reduced by making available law on recognition and enforcement of foreign judgment, the key qualitative and quantitative research methods, namely, activity-based costing (ABC) and in-depth interview as well as other research methods e.g. data collection was applied and adapted to this research.

By adapting ABC to the case study of the enforcement of a judgment of Thai Court in Lao PDR, it is found that the time spent on the enforcement of the Thai judgment under provisions under Lao PDR's new law is shorter than the case where the creditor brings the same source of obligation as per the Thai judgment to a court in Lao PDR by filing of a fresh lawsuit. Therefore, procedures of the case are the significant variables directly affecting the legal cost and cost drivers which result in reducing the litigation costs substantially.

## ACKNOWLEDGEMENTS

Without kind supports and guidance of many people in Thailand and Lao PDR whose names are mentioned below and those who are not mentioned herein, this research cannot achieve its objectives to demonstrate and prove, in terms of numeral and monetary values, the legal hypothesis on the topic of the research which is an abstract issue. I would like to express my sincere thanks to all of them.

First, I would like to express my sincere thanks to Assoc. Prof. Dr. Nakorn Indra-payoong, the research advisor, Asst. Prof. Dr. Pairoj Raothanachonkun and Assoc. Prof. Dr. Pornchai Wisuttisak for their kind supports and helpful guidance.

My sincere thanks are extended to Dr. Phet Sengpunya, Varavudh Meesaiyati, Anongsack Manilak and Assoc. Prof. Lengsak Boontalad, the legal practitioners and scholar in Lao PDR and the lawyers in Thailand whose names are not mentioned herein for the helpful information and valuable comments.

Last but not least, I would like to thank my mother and daughter for the continuous inspiration, all the staff and the management team of the Faculty of Logistics, Burapha University, my colleagues and friends for their supports.

Pramual Chancheewa

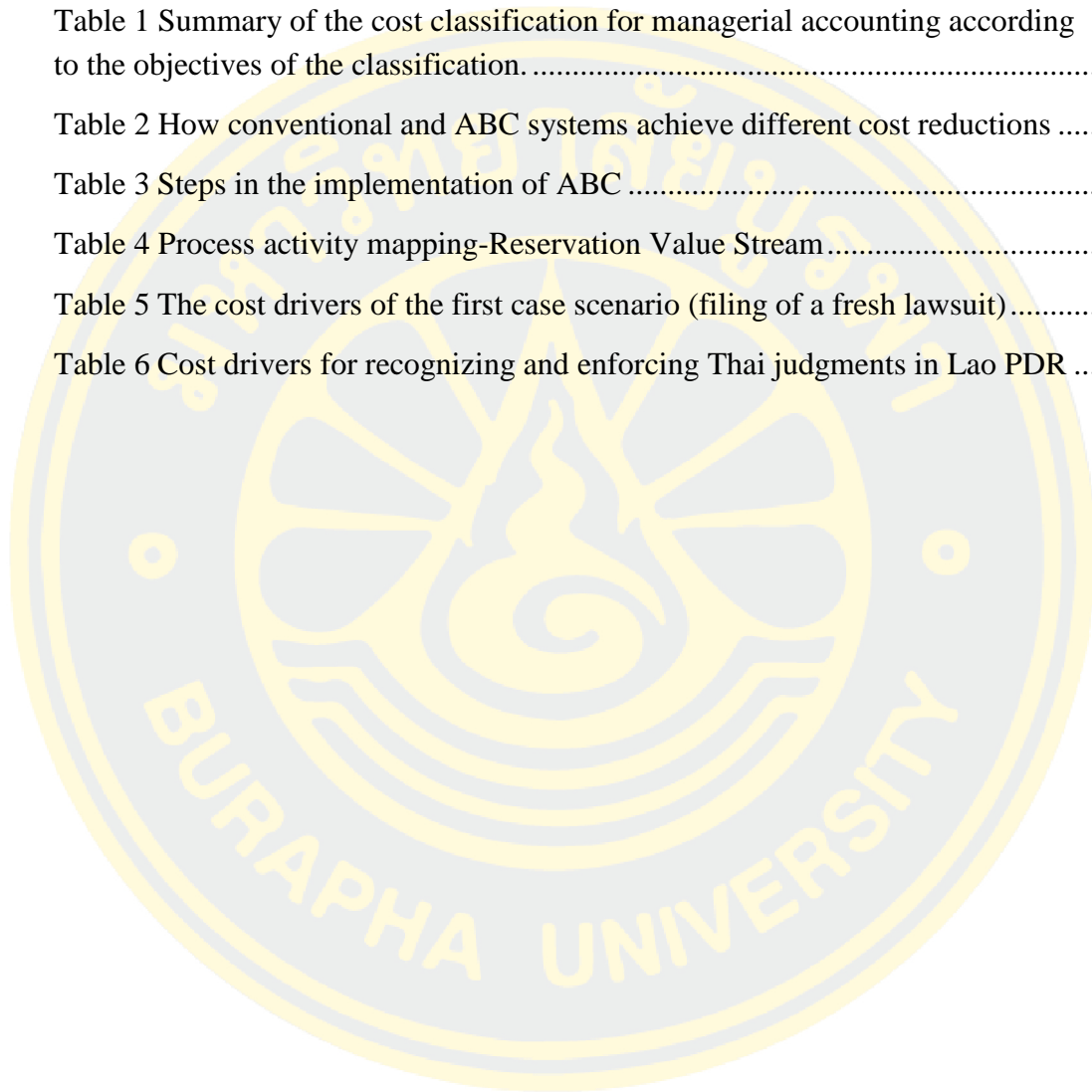
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# CHAPTER 1

## INTRODUCTION

### **Research background and importance of the problem**

Due to the lack of a Thai law on the recognition and enforcement of foreign judgment, the controversy over the position of Thai law on the recognition and enforcement of foreign judgment emerged many decades ago and is still unclear nowadays. Thai scholars have different views on such issue; some of them viewed that the principle of conflict of laws could solve the problem and there was no need to enact a specific law on this matter, while some scholars viewed that such a specific law should be required. However, the question on the financial benefits of implementing a law on recognition and enforcement of foreign judgments, which is a contemporary phenomenon has been overlooked. Therefore, adaptation of appropriate research tools, such as activity-based costing (ABC) to the said issue of the legal controversy to demonstrate and prove the financial benefits in terms of reduction in litigation costs by making availability of such a specific law could help facilitating a decision on whether Thailand should have a specific law on the recognition and enforcement of foreign judgment.

When a civil dispute arises, especially in case of monetary debts, the parties concerned may require legal means or remedy to solve the dispute; such legal means or remedy may be referred to as “Dispute resolution” There are 3 major types of dispute resolutions, namely mediation (including conciliation), arbitration and civil action. Each resolution has its own rules and procedures but it is fair to say that the most popular ones are arbitration and civil action.

#### **1. Mediation**

As an alternative dispute resolution, mediation can be conducted in court by the mediator(s) appointed by the court or outside the court by the parties privately without the involvement of the court. In the latter case, the mediator(s) will be jointly appointed by the parties. Also, mediation can be conducted by a body established by law and for a specific type of dispute, e.g. insurance and reinsurance disputes, such as, in the case of Thailand, the Office of Insurance Commission (OIC).

No matter what the applicable rules or procedures of mediation are, the rule of thumb for this type of dispute resolution still remains that the mediator's role is not merely a person persuading the parties in the dispute to compromise but also to join the negotiation meeting. However, the mediator's suggestion does not have a binding effect on the parties because it is only a suggestion (Glahn, 1970 cited in Saisoonthorn, 2016).

“Conciliation” is, in principle, similar to mediation but different in detail.

## **2. Arbitration**

Arbitration is an out-of-court dispute resolution; meaning that arbitral procedures shall not be conducted in court but at a place stipulated in the arbitration agreement or a place agreed by the parties.

It is a method of dispute resolution which is justified by and dependent upon the existence of an arbitration agreement between the parties concerned (Ambrose & Maxwell, 2009).

The arbitration agreement can be a clause in the main contract or a separate agreement concluded by the parties in the dispute before or after the occurrence of their dispute.

The good point of arbitration is that the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, also known as “The New York Convention, 1958”, which applies to the matter of recognition and enforcement of foreign arbitration awards, was ratified worldwide by many powerful countries, such as the United States of America, Russia, Japan, United Kingdom, France, and Germany. These countries and other developed countries have acceded to this Convention (Ariyanuntaka, n.d). The member countries also include Thailand and the Lao People's Democratic Republic (Lao PDR).

## **3. Civil action or lawsuit**

Unlike arbitration, action in court may not be dependent upon the existence of an agreement (arbitration agreement), for example, an action on the grounds of negligence causing damage to another person or so called “Non-contractual claim” or “Tort claim” or “Wrongful act”.

It is apparent that the process of this type of dispute resolution (civil action or lawsuit) must be carried out in court; this is different from mediation and arbitration which can take place out of the court.

Basically, if the parties in a court case (the plaintiff and defendant) are in the same country, both parties expect a competent court in their country to have jurisdiction over their court case. However, in case of an international dispute between the parties of different nationalities who are not in the same country, enforcement of foreign judgment will always be an important problem which may result in a repetition of the trial and increased legal costs if the concerned countries do not have a law on the recognition and enforcement of foreign judgement.

Presently, Thailand has enacted some substantive laws concerning international transport under which the legal concept of choice of court (or choice of jurisdiction) was recognized by way of the substantive laws allowing the injured person to choose one of the competent courts as specified by the laws concerned while the competent courts are in different countries. The substantive laws are the Multimodal Transport Act, B.E. 2548 (2005), International Carriage of Goods by Road Act, B.E. 2556 (2013), International Carriage of Passengers by Road Act, B.E. 2557 (2014) and International Carriage by Air Act, B.E. 2558 (2015). However, these laws are silent on recognition and enforcement of foreign judgment despite the right of the plaintiff to choose one of the competent courts as stipulated by law.

#### **4. Enforcement of the foreign judgments in Thai courts**

Recently, the legal concept of recognition and enforcement of foreign judgments was accepted by the Civil Liability for Oil Pollution Damage Caused by Ships Act, B.E. 2560 (2017) (or “CLC Act”) and the Requirement of Contributions to the International Fund for Compensation for Oil Pollution Damage Caused by Ships Act, B.E. 2560 (2017) (or “FUND Act”), the two new Thai laws concerning liability for oil pollution damage. However, these 2 new laws do not apply to commercial disputes which are irrelevant to oil pollution. Besides, the two new laws do not provide for the procedure or procedural rules for enforcement of foreign judgment.

In principle, if a judgment rendered in one country is neither recognized nor enforceable in another country and a fresh lawsuit is to be commenced in the other

jurisdiction where the debtor has assets, this will incur double costs. Also, the point is that, in Thailand, the problem of the lack of a law on recognition and enforcement of foreign judgments has emerged since the last century but it is still unresolved nowadays despite many Thai university scholars and lawyers including judges having suggested the need to have such a specific law.

Besides the fact that Thailand does not have any specific law dealing with the matter of recognition and enforcement of foreign judgment, Thailand has neither entered into any bilateral or multilateral agreement with other countries, nor has it been a party to any treaties or convention on the recognition and enforcement of foreign judgments. As a result, foreign judgments cannot be enforced in Thailand. Therefore, to enforce a foreign judgment in Thailand, the plaintiff has to commence the legal proceedings again but, this time, in the Thai court and where it can utilize and submit the foreign judgment to the Thai court as evidence of debt (Academy of Public Enterprise Policy, Business and Regulation [APaR], 2017)

#### **5. Enforcement of the foreign judgments in Lao PDR's courts**

Unlike some neighboring countries of Thailand, they have domestic laws governing the recognition and enforcement of foreign judgments, e.g. the Law on Civil Procedures of Lao PDR 2004 (as recently amended in 2012), the Civil Procedure Code of Vietnam 2004, the Code of Civil Procedure of Cambodia 2007, the Code of Civil Procedure of Myanmar 1908, the Reciprocal Enforcement of Judgments Act of Malaysia 1958 and the Reciprocal Enforcement of Foreign Judgments Act of Brunei 1996.

#### **Hypotheses**

It could be assumed that if there is a specific law governing the recognition and enforcement of foreign judgment, the relevant costs of access to justice through judicial means should be reasonably reduced because such a specific law could avoid incurring unnecessary litigation costs in repeating the trial and witness-examination in the court and thus, it results in a reduction in litigation costs. The term "Litigation costs" in this context has a very broad meaning as it includes the varieties of different costs, such as legal costs, court fees, management costs, travel and accommodation expenses incurred by witnesses etc. Nevertheless,

the possibility and assumption of such reduction seems to be an abstract hypothesis which need to be proved by research, particularly, from a logistics perspective and both qualitative and quantitative methods for which the outcome can be measured in monetary and numerical values; this is the objective of this research and will be further elaborated on below.

Therefore, the question of the hypothesis of the assumption in preceding paragraph could be tested by appropriate qualitative and quantitative research methods or tools to arrive at the conclusion that reduction in litigation costs could be possible.

### Research framework

In consequence of the above hypotheses, the concept of the research can be demonstrated in the flowchart below.

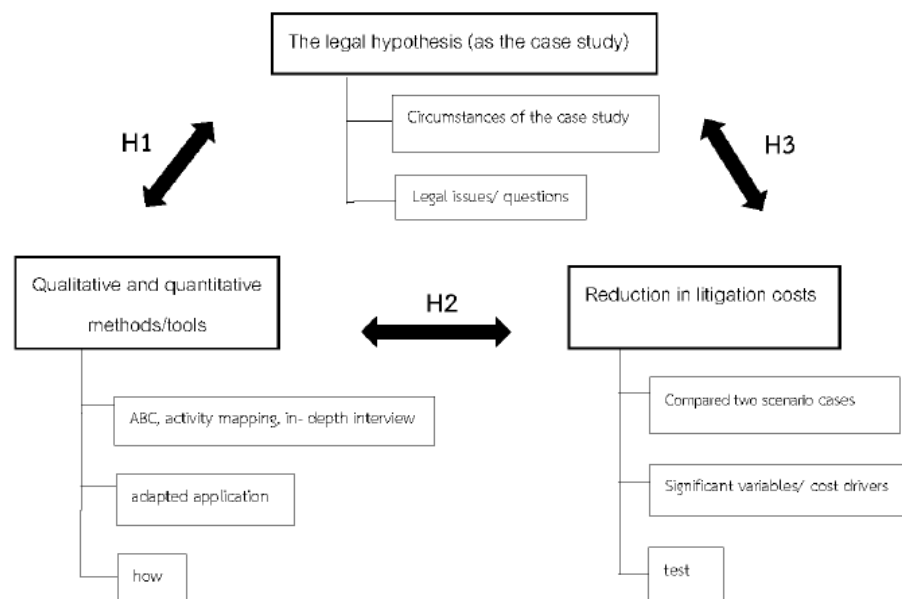


Figure 1 Research framework

## **Research objectives**

In broad terms, the main objective of this research is to establish that litigation costs to be incurred in enforcing a foreign judgment can be reduced if a judgment handed down in one country is recognized and enforceable in other countries. Ideally, the aim of the research is to prove an abstract hypothesis (reduction in litigation costs) in terms of a numerical value of the likely amount of litigation costs which could be reduced in a case study of Thailand and Lao People's Democratic Republic (Lao PDR).

The objectives of the study can be itemized as follows:

1. To study Thai laws which recognize the choice of jurisdiction, the laws of Thailand and Lao PDR and international agreements and conventions concerning the recognition and enforcement of foreign judgment.

2. To analyze the problem arising from the fact that Thailand does not have a specific law to govern the recognition and enforcement of foreign judgments and the question of how the litigation costs are incurred because of the problem.

3. To study the important principles of costs and other relevant issues including activity mapping and activity-based costing (ABC) in order to prove the aforesaid abstract hypothesis (which is the objective of this research) in terms of numerical value and the likely amount of litigation costs to be reduced in a case study of Thailand and Lao PDR if a judgment of the Thai court is recognized and enforceable in the Lao PDR.

For the sake of clarity, it is important for me to note the research objectives of this study which will be focused on laws and economies study in terms of the connection between cost reductions and the availability of specific laws regarding the recognitions and enforcement of foreign judgements as a tool to achieve such reduction. Nothing in this research will, therefore, involve political matters or judicial sovereignties of Thailand and the Lao PDR.

In addition to the preceding paragraph, the research objectives of this study do not cover the background of the repeal of Section 7 of the Civil Procedure Code (B.E. 2477) which had allowed the parties to the proceedings to agree on jurisdiction if such agreement was incorporated in their contract.

## Scope of research

1. The fundamental concern of this research is the fact that Thailand neither has a specific law nor has entered in to a bilateral agreement with any country regarding the recognition and enforcement of judgments, but some substantive laws which recognize the legal concept of “Choice of court” or “Choice of jurisdiction” have been enacted, and such a situation raises a question as to how the plaintiff can enforce the judgment in the jurisdiction of the court in another country despite being one of the competent courts stipulated in the law concerned. The scope of study in respect of the Thai substantive laws will be limited to the following existing Thai laws which have relevance to the choice of court concept and matter of the recognition and enforcement of foreign judgments:

- 1.1 Multimodal Transport Act, B.E. 2548 (2005)
- 1.2 International Carriage of Goods by Road Act, B.E. 2556 (2013),
- 1.3 International Carriage of Passengers by Road Act, B.E. 2557 (2014)
- 1.4 International Carriage by Air Act, B.E. 2558 (2015).
- 1.5 Civil Liability for Oil Pollution Damage Caused by Ships Act, B.E. 2560 (2017) (or “CLC Act”)
- 1.6 Requirement of Contributions to the International Fund for Compensation for Oil Pollution Damage Caused By Ships Act, B.E. 2560 (2017) (or “FUND Act”)

Also, as a case study of Thailand and the Lao PDR, the scope of research will extend to the study of the Law on Civil Procedures of Lao PDR as amended in 2012 in respect of the recognition and enforcement of foreign judgment.

2. In order to achieve the research objectives, the scope of research will include the study of the importance and variety of costs, and analysis of appropriate tools; namely, activity mapping, activity based costing (ABC) and non-structured interview (in-depth interview) to be adopted and modified in order to prove, in terms of quantitative and numerical value, the likely amount of the legal costs which could be reduced in a case study of Thailand and the Lao PDR in 2 different circumstances, i.e. 1) where a judgement of a Thai court is neither recognized nor enforceable in the jurisdiction of the Lao PDR and 2) on the contrary, if the Thai judgement is recognized and enforceable there.

### **Expected outcome of the research**

1. To understand the legal principle of recognition and enforcement of foreign judgment, the essential principles of costs, variety of the types of costs, activity-based costing (ABC), activity mapping and in-depth interview as the research tools.

2. To realize the problematic situation arising from the lack of a specific Thai law on recognition and enforcement of foreign judgment which causes an increase of litigation costs.

3. To achieve the proof of the hypothetical question that litigation costs can be reduced if the specific laws on recognition and enforcement of foreign judgements are made available by adopting quantitative and qualitative methods as well as other appropriate tools to prove and arrive at numerical outcome or value.

4. To suggest that Thailand should have a specific law on recognition and enforcement of foreign judgment.

### **Limitations of the research**

There are a few limitations of the research which shall be further elaborated on as follows:

1. For the avoidance of doubt, the foreign judgments to be further discussed under this research in the terms of recognition and enforcement shall be limited to civil and commercial judgments for money debts which are irrelevant to criminal matters.

2. As a matter of fact, Thailand does not have a specific law to govern the recognition and enforcement of foreign judgments nor has it entered into any bilateral agreements with other country on the recognition and enforcement of foreign judgments, while the position of Lao PDR is different. The Civil Procedure of Lao PDR 2004 (which was subsequently amended in 2012) contains provisions regarding the recognition and enforcement of foreign judgment and Lao PDR has entered into bilateral agreements with a few countries but, as per the report issued in March 2017 by the Academy of Public Enterprise Policy, Business and Regulation of the University of the Thai Chamber of Commerce (“APaR”), there has been no test case in Lao PDR which has applied the said provisions of law. Therefore, to achieve

the research objectives, the study must be made in the manner of a comparison of 2 different scenario cases, one where a civil judgment rendered by a Court in Thailand is neither recognized nor enforceable in Laos PDR and vice versa, which is the current existing situation, and the other which opposes the first one.

However, as pointed out above, the position of Thailand is different from the Lao PDR because Thailand has yet to enact a specific law on the recognition and enforcement of foreign judgments. In other words, Thailand does not have a procedural law as a basic rule for the recognition and enforcement of foreign judgments. Therefore, to enable us to see a comparison of the aforesaid 2 different scenario cases, this research will, for the purpose of the case study under this research, have to assume the circumstance leading to a judgement debt awarded by the court in one country (in this study, the IP & IT Court) to be enforced in other country (in this study, Lao PDR) which should be valid and acceptable to both countries. Since Thailand and Lao PDR are the parties to The Greater Mekong Sub region-Cross-Border Transport Agreement (“GMS-CBTA”), Annex 10, cross-border transport of goods by road and Thailand has enacted International Carriage of Goods by Road Act, B.E. 2556 (2013), the researcher decides to assume the circumstance of the case study to be the enforcement of a judgement debt for cargo damage arising from the cross-border transport of goods from Lao PDR to Thailand.

Also, to achieve the objective of this research, further assumptions are to be made that Thailand and Lao PDR have entered into a bilateral agreement on the recognition and enforcement of foreign judgments. Details of the assumptions will be further elaborated on in Chapter 3, Research Methodology.

3. In consequence of the above, the study in this research is a case study, which is influenced by Robert K. Yin’s concept of “Case study” with an attempt to prove an abstract hypothesis by adopting both qualitative and quantitative methods and tools to arrive at a numerical outcome or value.

Robert (2018) said, a case study is an empirical method that investigates a contemporary phenomenon as the case in depth and within its real-world context, especially when the boundaries between phenomenon and context may not be evident clearly. Therefore, we may envisage the difficulties and limitation of obtaining and collecting of accurate data and information in some aspects,

such as the actual amount of lawyer fees as part of legal costs to be incurred by the parties in litigation. In addition, a difficulty is also how to apply the research tools (activity mapping and activity-based costing) to the study properly or to modify them for the purpose of applicability to the study in this research.

### **Definition of terms**

1. ABC: Activity-based costing
2. APaR: The Academy of Public Enterprise Policy, Business and Regulation of the University of the Thai Chamber of Commerce
3. ASEAN: The Association of Southeast Asian Nations
4. Brussels Convention, 1968: The Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, 1968
5. CLC: International Convention on Civil Liability for Oil Pollution Damage, 1992
6. CLC Act: Civil Liability for Oil Pollution Damage Caused by Ships Act, B.E.2560 (2017)
7. CPC, 2012: The Civil Procedures of Lao PDR 2004 (as amended 2012)
8. EU: European Union countries
9. EEC: European Economic Countries
10. EFTA: European Free Trade Association
11. FUND: International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992
12. FUND Act: Requirement of Contributions to the International Fund for Compensation for Oil Pollution Damage Caused by Ships Act, B. E. 2560 (2017)
- GMS: The Greater Mekong Subregion
13. GMS-CBTA: The Greater Mekong Subregion-Cross-Border Transport Agreement
14. IP & IT Court: The Intellectual Property and International Trade Court
15. Lao PDR: Lao People's Democratic Republic
16. Lugano Convention, 1988: The Lugano Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, 1988
17. OIC: The Office of Insurance Commission

## **CHAPTER 2**

### **LITERATURE REVIEWS**

#### **National law and international law**

“Laws”, a word appearing in the topic of the case study in this research, is, in general, a broad term and can be categorized into many groups and pairings, such as civil law vs criminal law, private law vs public law, procedural law vs substantive law, and international law vs national law (or so called “Domestic law”, “Internal law” or “Local law”).

The essential difference between the national law and international law is that the international law is a description of an entire legal system: The international legal system by which the legal rules are created in order to structure and organize societies and relationship (Dixon & McCorquodale, 2003). Therefore, it was concluded by Thirawat (2015) that international law applies to the relationship between societies and states.

Saisoonthorn (2016) has studied the definition of the term “Treaties” in the Vienna Convention on Law of Treaties, 1969, and stated that it means the international agreements between the states which are expressly accepted by them, regardless of what the international agreements are termed e.g. Convention, Protocol, Declaration, Charter or Agreement. Villiger (2009) remarked that “Treaty” has a broader meaning than “International agreement” because every treaty is an international agreement but an international agreement may not be a treaty. Pivawattanapanich (2018) mentioned that Treaty may be in the form of a bilateral treaty or multilateral treaty depending on the number of contracting parties.

As for how the term “National law” is different from international law, Currie. (n.d.) provides the same meaning for “Internal law” and “Local law”, which is deemed the law or regulations enacted within the state to apply to circumstances, transactions and persons in that state having connection with the state.

Substantive law is different from procedural law because substantive law is part of the law that creates, defines and regulates the rights, duties and powers of

parties while procedural law is the rules that prescribe the steps for having a right or duty judicially enforced (Garner, 2019).

Therefore, one law may have a few positions at the same time, e.g. International Carriage of Goods by Road Act, B.E. 2556 (2013) of Thailand which is a national law and substantive law related to the case study in this research.

An example of a national law in the form of procedural law relating to the case study in this research is the Civil Procedure Law of Lao PDR, 2004 and the new version as amended in 2014.

The international law in the form of bilateral agreement between 2 countries is, for example, the Treaty between the Lao People's Democratic Republic and the Socialist Republic of Vietnam on Mutual Assistance in Civil and Commercial Matters dated 16 July 1998 (or so called "Vietnam-Lao Treaty").

### **Major dispute resolutions in civil dispute**

As a matter of law, there are 3 major dispute resolutions in the matter of civil and commercial disputes, namely mediation (including conciliation), arbitration and civil action but the most common are arbitration and civil action.

Each resolution has its own rules and regulations as well as pros and cons.

#### **1. Mediation**

The term "Mediation" is defined as a voluntary process in which the parties to a dispute shall work together with a neutral facilitator who is the mediator to help the parties reach a settlement, but this is not an adversarial process because the mediator does not decide the case (Dillon & Cameron, 2013).

In terms of international agreements, the European Union adopted a directive on cross-border mediation for civil and commercial disputes in 2008 which applies to all Member States when engaged in cross-border disputes within the EU (Clark & Taylor, 2013).

Mediation can be conducted in the court or out of the court at a place to be agreed by the parties in dispute.

In Thailand, mediation can be arranged by the courts or the authorities concerned, for example, in case of an insurance dispute, the Office of Insurance Commission ("OIC") issued in 2016, a regulation regarding mediation of insurance

disputes under which the mediation will be conducted by a third-party mediator or group of mediators qualified and listed under the regulation (Office of Insurance Commission on Mediation of Insurance Disputes, 2016).

Mediation may take place in the Thai court at the request of the parties to the proceedings or either of them, subject to the court's agreement and approval. In some cases, if the court is of the view that the dispute is not complicated and the parties should be able to reach an amicable settlement, the court may exercise its discretion to persuade or order the party to attend mediation. In both cases, the mediation in court will be conducted on a free of charge basis by the mediator(s) to be appointed by the court. Therefore, each court may have its own mediation regulations; for example, the Civil Court issued the Regulations of the Court Regarding the Guidelines for Conducting Mediation of Disputes before Lawsuits, B.E. 2562 (the Civil Court, 2019), and the Central Intellectual Property and International Trade Court issued the Regulations of the Court Regarding the Guidelines for Conducting Mediation of Disputes before Lawsuits, B.E. 2562 (The Central Intellectual Property and International Trade Court, 2019).

Nevertheless, it should be noted that the mediator does not decide the case because his/ her role is to persuade the parties to voluntarily compromise or reach an amicable settlement. The parties to the dispute are not obliged to agree with the mediator's suggestions (Glahn, 1970 cited in Saisoonthorn, 2016).

However, in some countries such as Lao PDR, it is the duty and responsibility of the court to mediate between the parties in the proceedings. This duty is provided in Article 18 of the Law on Civil Procedures (amended in 2012) of Lao PDR that states "The court has the duty and responsibility to mediate the litigants by seeking all conditions and methods to allow the litigants to agree with each other in good faith at all stages of the case proceeding and at all levels of the court."

It is worth noting that there is also another type of dispute resolution, so called "Conciliation, which is, in principle, similar to mediation because the suggestions made by the conciliator will not have a binding effect on the parties in dispute but the conciliator shall play a greater role in persuading the parties to compromise". Also, conciliation is more formal than mediation because the

conciliator will hear evidence and perhaps, conduct an investigation, make findings of fact and law, and may give a proposed solution to the parties (Chow, 2015).

Although mediation is slightly different from conciliation, they are the most common form of alternative dispute resolution (ADR), a broad term covering methods of resolving the disputes without the need to have the disputes adjudicated by the court or awarded by an arbitrator. Therefore, both the terms “Mediation” and “Conciliation” have broadly similar meaning and are often used interchangeably (Clare & Karen, 2009).

Although the parties in dispute are not bound to honor the mediator’s or the conciliator’s view or comment or suggestion (if any), if, as a result of the mediation or conciliation, the parties are able to reach an amicable settlement of the dispute, they may enter into a binding agreement in writing to record all the details of their agreement for further compliance and enforcement.

## **2. Arbitration**

Unlike mediation and conciliation, arbitration is a method of dispute resolution which is justified by and dependent upon the existence of an agreement between the parties (Ambrose & Maxwell, 2009).

In general terms, arbitration may be described as a consensual private process for submitting a dispute for a decision by one or more independent third persons, so called “Tribunal.” The decision rendered by the Tribunal is referred to as “Award” which will be recognized and enforced by the courts in most countries around the world if the award is final and legally binding on the parties (Phillip, 2004).

The aforesaid term “Award” is also referred to as “Arbitration award” or “Arbitral award.”

The term “Tribunal” can be referred to as “Arbitral tribunal” and is normally a panel of 3 arbitrators, but in some cases, such as a small case or small claim or for an uncomplicated issue, a sole arbitrator may be appointed, depending on the mutual agreement of the parties or the rules applicable to the arbitration.

It is important to note that, to resolve problems by arbitration, there must be an arbitration agreement mutually concluded by the parties concerned.

The term “Arbitration agreement” is defined by Section 11 of the Arbitration Act, B.E. 2545 (2002) of Thailand as “An agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.” The Act also recognizes the enforceability of foreign awards as stipulated in Section 41 of the Act that “Subject to Section 42, Section 43 and Section 44, an arbitral award, irrespective of the country in which it was made, shall be recognized as binding on the parties, and upon petition to the competent court, shall be enforced.”

However, enforcement of an arbitration award must be exercised through the medium of a court and the competent court is entitled to set aside or refuse to enforce the award in some circumstances, subject to the conditions stipulated by the national law or convention concerned.

There is a very well-known and successful convention on the recognition and enforcement of arbitration awards, so called the “New York Convention, 1958” which is an international convention under the auspices of the United Nations. Thailand acceded to the New York Convention in 1959. In 1968, Thailand also entered into a bilateral agreement with United States of America: it is the Treaty of Amity and Economic Relations between the Kingdom of Thailand and the United States of America 1968. Article II, 3 of the Treaty provides that arbitration agreements between nationals, including companies of the 2 countries shall not be unenforceable merely because the arbitration is to be held in the other country or because one or more arbitrators are not nationals of the country where enforcement is sought. (Ariyanuntaka, n.d.)

However, like the restrictions and refusal under Article V of the New York Convention, 1958, the Arbitration Act, B.E. 2545 (2002) provides for the legal concept of “Judicial review” and “Refusal of recognition and enforcement of arbitral award” under which the Thai Court may refuse enforcement of the arbitration award or dismiss the application for enforcement in some circumstances (Sections 43 and 44 of the Arbitration Act, B.E. 2545 (2002)). Therefore, it is important to note that the arbitral award is not always recognized or enforceable.

In conclusion, due to the enactment of the Arbitration Act, B.E. 2545 (2002), enforcement and recognition of a foreign arbitration award is not a problem

under Thai law so far as the award to be enforced and the enforcement do not fall within any of the restrictions under the Act.

### **3. Civil action or lawsuit**

This type of dispute resolution must be carried out in court, specifically, in the competent court by the damaged party bringing the dispute to court for adjudication. The process of the dispute resolution will start from the plaintiff filing a lawsuit against the defendant with the court, usually referred to as “Legal proceedings” (Cambridge dictionary, 2024).

Phillip (2004) has pointed out the differences between arbitration and legal action:

1. Arbitration is a consensual process because no one can compel the parties to arbitrate the dispute unless they have a binding arbitration agreement in place,
2. Arbitration is a private and confidential process,
3. In the case of arbitration, the parties have the power and freedom to 1) select the Tribunal, 2) choose the procedural rules to be applied to the arbitration proceedings, and 3) choose the language of the arbitration.

It can be seen that, in contrast to arbitration, once the dispute is brought to the court for adjudication, neither party in the dispute can select the judge who will decide the case nor choose the procedural rules or language: that is because such matters are already prescribed by the laws concerned.

Legal action or lawsuit in civil case is a type of dispute resolution by which the party in the dispute whose right was affected shall bring the dispute to the competent court. Once the case is accepted by the court for further proceeding, the opposing party who is a party in the court case as the defendant will have the right to file its defense and thereafter, witness-examinations shall take place. After completion of the parties' witness-examinations, the court will review the evidence adduced by the parties and then render a judgment (Asawaroj, 2005).

The matter of civil action seems reasonably complicated due to the differences of the 2 major systems of law, i.e. common law vs. civil law. The distinction between these 2 systems is that common law tends to be case centered and thus, judge centered, allowing scope for a discretionary, ad hoc, pragmatic approach to the particular problems which appear before the court while the civil law

system tends to be a codified body of general abstract principles which control the exercise of judicial discretion (Slapper & Kelly, 2001).

Notwithstanding the above complications, there are some international conventions dealing with the matter of enforcement of foreign judgments. They are the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, 1968 (“The Brussels Convention 1968”) and the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, 1988 (“Lugano Convention, 1988”).

The Brussels Convention 1968 applies to the European Economic Countries (“EEC”) only and thus, it does not apply to some countries in Europe, e.g. Iceland, Norway and Switzerland despite their positions as the members of European Free Trade Association (“EFTA”). This problem led to the discussions between EEC and EFTA to find the way to solve the problem and finally, the new Convention so called “The Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, 1988.” was signed by EEC and EFTA. This new Convention resulted in the member states of EEC and EFTA having a common rule for recognition and enforcement of foreign judgments (APaR, 2017).

The Brussels Convention 1968, and the Lugano Convention 1988, are not the only 2 international agreements on recognition and enforcement of foreign judgments. A further attempt to implement a new treaty concerning the enforcement and recognition of judgments on a cross-border basis was in progress when, during the 22<sup>nd</sup> Diplomatic Session on 22 July 2019, the Hague Conference on Private International Law (“HCCH”) and its delegates concluded the text of a new treaty governing the cross-border recognition and enforcement of civil and commercial judgments. This treaty is called “The Hague Judgments Convention 2019” which is the sister instrument to the 2005 Hague Choice of Court Convention but its scope is wider as it creates rules for the circulation of qualifying court judgments beyond cases where there was a judgment rendered on the basis of a choice of court agreement between the parties to an international dispute similar to the New York Convention, 1958, (the Convention deals with recognition and enforcement of arbitration awards). (Sheffield & Bayley, 2019). The Hague Judgement

Convention 2019 came into force and took effect for European Union countries (“EU”) and Ukraine on 1 September 2023.

As mentioned above, the Brussels Convention 1968 applies to EEC only and the Lugano Convention 1988 applies to both EEC and EFTA while The Hague Judgments Convention 2019 has come into force in the EU. Therefore, in conclusion, none of these Conventions can apply to Thailand or the Lao PDR.

From my research, in 1967, ten countries comprising Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Philippines, Singapore, Thailand and Vietnam formed the Association of Southeast Asian Nations or “ASEAN”.

The ASEAN member countries signed the ASEAN Ministerial Understanding on the Organization Arrangement for Cooperation in the Legal Field (1986) Bali, 12 April 1986, concerning legal cooperation among ASEAN countries which initially comprised 3 aspects, exchange of legal materials, judicial co-operation and legal education legal research. This Ministerial Understanding is however irrelevant to the matter of the recognition and enforcement of judgment (retrieved from [orc-agreement.asean.org](http://orc-agreement.asean.org)).

However, some ASEAN member countries have issued their own regulations and specific laws to govern the matter of the recognition and enforcement of foreign judgments although there is no ASEAN Framework Agreement on Recognition and Enforcement of Foreign Judgment.

The relevant laws in ASEAN member countries have been intensively studied by APaR of the University of the Thai Chamber of Commerce and reported in their Final Report. The outcome of the study relevant to this research is summarized as follows:

Brunei’s legal system was influenced by Common Law and Islamic law. The Reciprocal Enforcement of Foreign Act (Chapter 177 of the laws of Brunei) was enacted to govern the matter of recognition and enforcement of foreign judgment but the law applies to the judgments handed down in the countries that have entered into bilateral agreement with Brunei (International Comparative Guides, Brunei Construction and Engineering Law 2015 cited in APaR, 2017).

Cambodia recognizes foreign judgments on a reciprocal basis as provided in Section 199 (1) of the Code of Civil Procedure of Cambodia, 2007. The law also sets

some conditions for the courts in Cambodia to recognize and enforce foreign judgements.

Indonesia does not have a specific law to govern the recognition and enforcement of foreign judgment but has a restriction in the Civil Procedure Code that the courts in Indonesia will not enforce foreign judgments unless the case has been tried in an Indonesia court (Section 436 of the Indonesia Civil Procedure Code).

The Lao PDR's law dealing with the recognition and enforcement of foreign judgments is the Law on Civil Procedures (No.35/ PDR dated 14 June 2004) and its subsequent amendment. This law was amended and improved in July 2012 provides for general principles of recognition and enforcement of foreign judgments. Lao PDR also entered into the following bilateral agreement and treaty with Vietnam, France and Korea (APaR, 2017):

The Treaty between the Lao People's Democratic Republic and the Socialist Republic of Vietnam on Mutual Assistance in Civil and Commercial Matters dated 16 July 1998 (or so called "Vietnam-Lao Treaty").

The French-Lao Agreement on Mutual Assistance Establishing a Simplified Recognition and Enforcement Procedure of 16 November 1956.

The Treaty between the Lao People's Democratic Republic and the Democratic People's Republic of Korea on Mutual Assistance in Civil and Criminal Matters dated 20 June 2008.

Malaysia enacted the Reciprocal Enforcement of Judgment Act, 1958 ("REJA") adopting the legal concept of English Judgment (Reciprocal Enforcement) Act, 1933. Myanmar law adopted the legal concept "*Res Judicata*"; where the matter must be adjudicated by the competent court, final and also subject to judicial review under Myanmar law.

Singapore recognizes the enforcement rules in common law and the registration of foreign judgment under the Reciprocal Enforcement of Foreign Judgment Act ("REFJA"), and the Reciprocal Enforcement of Commonwealth Judgments Act ("RECJA") as well as the Singapore Rules of Court.

Vietnam recognizes foreign judgments handed down in the countries with which Vietnam has entered into an agreement or in the contracting states of any convention signed by Vietnam. Section 482 of Code of Civil Procedure No. 92/ 2015/

QH13 Hanoi, November 25th, 2015 provides that “The enforceable civil judgments/ Decisions of Courts are those that already took effect, including: d) Civil judgments/ Decisions of foreign courts, foreign arbitral award, which have been recognized and permitted for enforcement in Vietnam”. (The Civil Procedure Code of Vietnam).

In the Philippines, Rule 34 of the 1997 Rules of Civil Procedures sets the conditions on the recognition of foreign judgments. However, Rule 39, Section 48 of the Philippines Rules of Court provides for the position of a foreign judgment as a mere piece of evidence which assumes the rights of the parties in the proceedings (APaR, 2017).

As for Thailand, there is no a specific law to govern the matter of the recognition and enforcement of foreign judgements

The above differences in laws and regulations in ASEAN member countries apparently reveal the problem of the lack of a common agreement on the recognition and enforcement of foreign judgments in this group of countries including Thailand, a member of ASEAN.

### **Recognition and enforcement of foreign judgment**

Recognition and enforcement of foreign judgments is one of the key issues of this research.

There are 2 elements concerning this key issue; the meaning of the 2 terminologies i.e. “Judgement” and “Recognition and enforcement.”

As for the matter of the recognition and enforcement of a foreign judgement, the term “Judgement” is defined by some internation conventions, such as, in the COUNCIL REGULATION (EC) No 44/ 2001 of 22 December 2000 on the jurisdiction and the recognition and enforcement of Judgements in civil and commercial matters, Article 32 provides that “For the purposes of this Regulation, judgment” means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as, the determination of costs or expenses by an officer of the court. This definition was also adopted by Article 2(a) of REGULATION (EC) No 1215/ 2012 of 12 December 2012 on the jurisdiction and the recognition and enforcement of Judgements in civil and commercial matters (recast).

Article 32 of Lugano Convention 2007 (CONVENTION on jurisdiction and the recognition and enforcement of Judgements in civil and commercial matters) defines the term “Judgment” slightly different from the above 2 REGULATIONS but is no difference in essence that is “For the purposes of this Convention, “Judgment” means any judgment given by a court or tribunal of a State bound by this Convention, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as, the determination of costs or expenses by an officer of the court. As a legal term, judgment is the official decision of a court finally resolving the dispute between the parties to the lawsuit. (United States Department of Justice n.d.) Therefore, in this research in respect of the matter of the recognition and enforcement, judgment of the court and decision shall have the same meaning.

As for “Recognition” and “Enforcement”, it is important to note that they are different, especially when they are used in the matter of recognition and enforcement of judgment or decision.

In general, the English word or the term “Recognition” means the act of accepting that something exists, is true or is official, while “Enforcement” is the act of making people obey a particular law or rule. (Oxford Learner’s Dictionaries, n.d.)

As a legal term, “Recognition” is defined by Black’s Law Dictionary as the confirmation that an act done by another person was authorized while “Enforcement” means the act or process of compelling compliance with a law, mandate, command, decree or agreement. It is interesting to note that Enforcement of Foreign Judgments Act is also defined by this dictionary as a uniform law, adopted by most states, that gives the holder of a foreign judgment essentially the same rights to levy and execute on the judgments as the holder of a domestic judgment.

The above definitions seem to require further clarification for better understanding. The meanings of the 2 terms and their differences were discussed and pointed out by Pivawattanapanich (2018) who stated that recognition of a foreign judgment is a matter where a Court in one country exercises its judicial power to recognize a judgment handed down in other country so called “Rendering court” and the term “Recognition” has nothing relevant to the matter of enforcement of judgment. In general, recognition of foreign judgment mostly involves the judgment

concerning the legal status of a person particularly, under family law and the matter of divorce including the adoption of a child.

In comparison, Pivawattanapanich (2018) further pointed out that enforcement of a foreign judgment denotes the matter where the plaintiff who has obtained a judgment in his favor, wishes to force the defendant to perform the judgment debts as awarded by the judgment in case the defendant has any property in other country which can be confiscated by virtue of the Court in that other country (or so called “Enforcing court”) and thus, enforcement of the judgment rendered by the rendering Court against the debtor’s property in the other country shall require the judicial power of the enforcing Court.

What is the crucial difference between the recognition of foreign judgment and the enforcement of foreign judgment? This question is clarified by Pivawattanapanich (2018), recognition does not always require enforcement of judgment, for example, a judgment in respect of the adoption of a child. This is in contrast with the enforcement of a judgment which always requires recognition of the judgment for the simple reason that the enforcement of a judgment will not be practicable if the judgment is not first recognized, or in other word, recognition of the judgment is a condition precedent to the enforcement of the judgment and once a judge in one country agrees to enforce a judgment of a foreign Court, it is tantamount to recognition of the foreign judgment.

The difference between recognition and enforcement was also addressed by Hartley (2023) as 2 distinct concepts. In brief, recognition takes place when the court addressed accepts a determination of the parties’ legal rights and obligations made by the court of origin while enforcement involves going one step further and applying the legal procedures of the court addressed to ensure that the judgement debtor obeys the order of the court of origin.

Vichai Ariyanuntaka (n.d.) gave more information about the enforcement of a foreign judgment, in principle, there are 2 methods of such enforcement; 1) to commence a fresh proceeding in the foreign country in order to obtain a judgment of the foreign Court (enforcing Court), and 2) to register the judgment in the foreign country where reciprocal treatment exists. The first method is normally based on the judgment rendered by the rendering Court as the cause of action in

the enforcing Court but, in his view, this method is dilatory and cumbersome because the plaintiff has to sue the defendant twice, one in the rendering Court and the other in the enforcing Court. The second method is different from the first one because if a judgment originally rendered in one country can be registered in other country, the plaintiff can, after the registration, enforce it in such other country as if the judgment was handed down by the enforcing Court.

APaR (2017) conducted a survey on the doctrine and concept applicable to the matter of the recognition and enforcement of foreign judgments and found that there are 4 doctrines and concepts:

1. Reciprocity: A reciprocal practice of one state to recognize and enforce a judgment rendered in another state if the latter state agrees to recognize and enforce its judgment.

2. Doctrine of Obligation: this doctrine is based on the idea that any judgment which is handed down by the competent court shall impose the duty or obligation on the defendant to comply with the judgment and the courts in other countries shall be bound to enforce the obligation under such judgment as well.

3. Principle of Territorial Sovereignty: the basic principle is that each state shall have its own territorial sovereignty over its citizen and thus, recognition and enforcement of foreign judgment is considered a loss of state independence.

4. Comity: This principle was influenced by the common law system and taken as guideline for the recognition and enforcement of foreign judgments.

### **Judgments of Thai courts and Thai laws concerning recognition and enforcement of foreign judgments**

#### **1. The current Thai laws concerned**

Before discussing this topic further, it is important to reiterate that currently, there are many Thai laws, especially the laws concerning international transport which recognize the legal concept of “Choice of jurisdiction” or “Choice of court” giving rights to the claimants to choose one of the competent courts as specified by the law concerned to hear the case. However, none of the Thai laws has the provisions to recognize and enforce a foreign judgment.

Those Thai laws and the relevant provisions are quoted below:

### **1.1 The Multimodal Transport Act, B.E. 2548 (2005)**

Section 65. The parties to the multimodal transport contract may agree, by stipulating such agreement on the multimodal transport bill of lading or contract of multimodal transport, that a court in any country which, according to the law of that country, has jurisdiction to consider civil claims arising from multimodal transport contract or tort shall be the competent court having jurisdiction to consider and adjudicate the case.

Where the court of jurisdiction is not specified in the contract for entering a civil action on the ground of multimodal transport contract or tort, the plaintiff, at his option, may institute an action in any of the following courts which, according to the law of the country where the court is situated, has jurisdiction to consider the case:

1.1.1 The court in a country where the principal office or domicile of the defendant is situated;

1.1.2 The court in the country where the multimodal transport contract was executed, provided that the defendant has a place of business, a branch or agent in that country;

1.1.3 The court in the country where the multimodal transport operator took the goods in his charge or delivered the goods.

However, the parties may agree in writing to institute an action in any court having jurisdiction to try the case in accordance with the law of that country if such agreement is made after the claim has arisen.

### **1.2 International Carriage of Goods by Road Act, B.E. 2556 (2013)**

Section 39. The Central Intellectual Property and International Trade Court shall be the competent Court under this Act.

The plaintiff may bring an action arising from international carriage of goods by road, whether deriving from the contract or the wrongful act, in any Court of the country that has an agreement with Thailand concerning international carriage of goods by road and that Court is competent according to the law of that country as follows:

1.2.1 The Court of the country where the carriage commenced from or destined to;

1.2.2 The Court of the country where the loss of or damage to the goods occurred;

1.2.3 The Court of the country where the principal place of business of the carrier is located, or;

1.2.4 The Court of the country where the plaintiff is domiciled.

**1.3 International Carriage of Passengers by Road Act, B.E. 2557 (2014)**

Section 33. In case of filing an action claiming compensation under this Act, the plaintiff, at his option, is entitled to institute an action in any court having jurisdiction to adjudicate the dispute according to the law of the country as follows:

1.3.1 The court in the country where the carriage originated from or terminated;

1.3.2 The court in the country where the loss or damage occurred, if it could be identified;

1.3.3 The court in the country where the principal place of business of the carrier is situated; or

1.3.4 The court in the country where the plaintiff is domiciled.

In case of filing an action to claim compensation under this Act in Thailand, it shall be under the jurisdiction of the Intellectual Property and International Trade Court.

**1.4 International Carriage by Air Act, B.E. 2560 (2015) (No. 2)**

Section 56/ 1 an action for damages in respect of the international carriage by air under the Convention must be brought before the competent court, at the option of the plaintiff, in the territory of one of the following State Parties:

1.4.1 The court of the domicile of the carrier;

1.4.2 The court of the carrier's principal place of business;

1.4.3 The court of where the carrier has a place of business through which the contract has been made;

1.4.4 The court at the place of destination.

In respect of damage resulting from the death or injury of a passenger, an action may be brought by the plaintiff, in addition to the courts mentioned in paragraph 1 of this Section, before the court in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft, or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

Section 56/ 3 Any action for damages in respect of international carriage by air under the Convention against the carriage performed by actual carrier as provided by Section 56/ 2, the plaintiff, in addition to his option to file lawsuit in the territory of one of the State Parties as provided by Section 56/ 1, may, at his option, bring an action before the court in the territory of the State Party where the actual carrier has domicile or principal place of business.

**1.5 Civil Liability for Oil Pollution Damage Caused by Ships Act, B.E. 2560 (2017) (or “CLC Act”)**

Section 36. A final judgment on pollution damage given by a court in a foreign country which is a Contracting State to the Convention shall be enforceable in Thailand except where:

- 1.5.1 Such judgment was obtained by fraud;
- 1.5.2 The defendant was not duly served a summons and was not given a reasonable opportunity to present his case in defense;
- 1.5.3 Such judgment is contrary to public order or good morals.

The period of time, conditions and procedures for an application to the Court for enforcement of a judgment of a foreign court under paragraph one shall be in accordance with the Rules of the Court.

(The remark at the end of the Act clearly suggests that the CLC Act was enacted by the Thai Government to transform the International Convention on Civil Liability for Oil Pollution Damage, 1992 (“The CLC”) into Thai law)

**1.6 Requirement of Contributions to the International Fund for Compensation for Oil Pollution Damage Caused by Ships Act, B.E. 2560 (2017) (or “FUND Act”)**

Section 31. In the case where a claim for compensation for pollution damage is made against the shipowner or the guarantor of the shipowner before a court of a foreign country which is a Contracting State to the Liability Convention but is not a Contracting State to the Fund Convention, the person suffering pollution damage has the right to bring an action against the Fund before the Intellectual Property and International Trade Court if such action falls within the jurisdiction of the Intellectual Property and International Trade Court under the law on civil liability for oil pollution damage caused by ships.

Section 34. A final judgment on compensation by the Fund given by a court in a foreign country which is a Contracting State to the Fund Convention shall be enforceable in Thailand except where:

1.6.1 Such judgment was obtained by fraud;

1.6.2 The defendant was not duly served a summons and was not given a reasonable opportunity to present his case in defense;

1.6.3 Such judgment is contrary to public order or good morals.

The period, conditions and procedures for an application to the Intellectual Property and International Trade Court for enforcement of a judgment of a foreign court under paragraph one shall be in accordance with the Rules of the Intellectual Property and International Trade Court.

(The remark at the end of the Act clear suggests that the FUND Act was enacted by the Thai Government to transform the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (“The FUND”) into Thai law)

It can be seen from the above quoted provisions of laws that “The choice of court” concept as stipulated in the above transport laws does not deal with the matter of recognition and enforcement of judgment despite the above substantive laws endorsing the right of the claimant to choose the competent court. However, unlike the above transport laws, the CLC Act and the FUND Act, which deals with oil pollution damage, contains the provisions regarding jurisdictions and enforcement of

foreign judgments similar to those in the CLC and the FUND which were ratified by Thailand and transformed into the CLC Act and the FUND Act. Jurisdiction under both Conventions may become an issue, particularly when the action has started in the competent jurisdiction the final judgment of a competent court must be recognized by all contracting States of 1992 CLC but the FUND itself is not bound by any judgment in proceedings in which it has not participated (Baatz, 2014).

More importantly, the CLC Act and the FUND Act do not provide for the procedures for enforcement of the foreign court's judgment but leave it to the Intellectual Property and International Trade Court ("The IP & IT Court") to set the relevant procedures. So far, the IP & IT Court has yet to issue any regulation for such procedures. Also, the problem is that even if the IP & IT Court had issued such regulation, it would be applicable to the recognition and enforcement of foreign judgments rendered for the claims in respect of oil pollution damage under the CLC and the FUND including the CLC Act and the FUND Act only.

In the above circumstances, the problem of the lack of a specific Thai law to govern the matter of recognition and enforcement of foreign judgment still remains unresolved although Thailand has ratified some international conventions (i.e. the CLC and the FUND under which the jurisdiction and enforcement of foreign judgment are endorsed).

The problem of recognition and enforcement of foreign judgments first emerged in the last century and was discussed in a court case of the Thai Supreme Court in B.E. 2461 (1918) but so far, the matter has not been resolved.

In the Supreme Court Judgment No. 585/ 2461 (1918), the plaintiff and the defendants were Vietnamese. The plaintiff had sued the defendant in the Court of Saigon, Vietnam on the grounds of breach of a sale contract for bicycles and rickshaws. After the plaintiff obtained a default judgment in her favor, one of the defendants fled to Thailand. The plaintiff then appointed a representative to file a civil lawsuit against the defendant in the Thai Court. The defendant raised an argument in his defense that he was neither aware of the lawsuit in Saigon Court nor did he receive the writ or copy of the complaint.

After the trial, the Civil Court of Thailand handed down a judgment in favor of the plaintiff on the grounds that the Court was convinced by the evidence that

the defendant did not deliver the bicycles and rickshaws to the plaintiff and thus, the plaintiff had the right to sue the defendant.

The defendant filed an appeal but the judgment of the Court of the First Instance was upheld by the Appeal Court. The defendant then filed a final appeal (Dika) to the Commission of the Supreme Court. At this final stage of the proceedings, the Supreme Court, having taken the legal principle of private international law into consideration, adjudicated that the foreign judgment to be enforced in the Thai Court must have been final. Since the Court was not convinced by the plaintiff's evidence that the judgment of Saigon Court was final, the plaintiff could not rely on such judgment as the grounds of claim to file an action with a Thai Court.

The above rationale of the Supreme Court was broadly criticized by many Thai scholars and law students; for example, Sriboonroj (2011) views that the judgment reasoning of the Thai Supreme Court was based on common law, but a further question of law may arise as to whether the Thai Court would agree to enforce a foreign judgment if the grounds of claim was not a breach of contract but for performance of debt or omission of an act.

Lengthaisong (1972) referred to the above Supreme Court Judgment No. 585/ 2461 (1918) and suggested in his article that the general principle of private international law which is stipulated in Section 3 of the Act on Conflict of Laws B.E. 2481 (1938) could be ascertained by reference to the said Supreme Court judgment. His suggestion was rejected by Sooksripaisarnkit and Garimella (2017).

A discussion on slightly different angle was made by Okanurak, Vallayapet, Pakdeejit, and Rakwattanakul (2011) who stated that currently, Thai law is silent on the enforcement or recognition of a foreign judgment in Thai jurisdiction. Therefore, a new trial based on the merit must be initiated in the Thai Court and the foreign judgment as well as documentary evidence submitted in the foreign proceedings may be admissible as evidence in the Thai proceedings. This view was also supported by Sooksripaisarnkit and Garimella.

Pivawattanapanich (2018) discussed the same issue and was of the view that Thailand does not have a specific law on this matter. The most important obstacle resulting in the non-development of Thai law on the recognition and enforcement of

a foreign judgment was the reluctance of the Thai Courts to recognize and enforce foreign judgments for fear of the loss of judicial power.

From the judge's perspective, Indrambarya (1984), a retired judge, commented in 1984 on the enforcement of foreign judgment that it is certain that enforcement of a foreign judgment by way of instituting a fresh lawsuit in the Thai Court (action on judgment) will take more time and incur more expenses than taking the foreign judgment to enforce in other country in the same manner of the judgment rendered by the Court in the same country. His view suggests that should there be a specific law governing the recognition and enforcement of foreign judgment, the relevant costs of access to justice through judicial means could be reasonably reduced because such a specific law could avoid incurring unnecessary litigation costs in repeating the trial and witness-examination in the court. However, his valuable view was raised from perspective of a learned lawyer (judge) and thus, the view was silent on how the costs could be reduced.

The above comment by Kanok Indrambarya (1984) was supported by a recent court case in the IP & IT Court which was appealed up to the Supreme Court and finally adjudicated by the Supreme Court in the Judgment No. 2472/ 2559 (2016). In brief, a cargo vessel ran aground during her voyage from Thailand to Amsterdam, Netherland in July 2001. The rice cargo on board sustained wet damage with high moisture and could not be used for human consumption. The consignee sued the carrier in the Amsterdam Court for damage to the cargo. The defendant appointed a local lawyer to defend and the litigation continued until February 2010 a final judgment was rendered in favor of the plaintiff. In early 2014, the plaintiff sued the carrier in the IP & IT Court, Thailand to enforce the judgment of the Amsterdam Court. The defendant challenged the lawsuit on the ground that there was no Thai law to endorse the enforcement of a foreign judgment in Thai Court. The IP & IT Court agreed with the challenge and dismissed the case. The judgment was appealed in 2015 and the Supreme Court handed down its final judgment in 2016 confirming that the plaintiff did not request the Thai Court to issue a decree to enforce the judgment of the Amsterdam Court but commenced fresh proceedings based on the foreign judgment. Therefore, the plaintiff was entitled to file the lawsuit with the Thai Court and thus, the case must be returned to the First Court to start witness examination.

Since the plaintiff had no choice but to restart the case in the Thai Court after the lengthy litigation in the Amsterdam Court and the two-year litigation in Thai Courts, they ultimately decided to discontinue the case as it was not worth incurring further legal costs for an uncertain outcome (interview with Ravee Mekvichai, the case handler, 8 May 2023).

It can be seen from the above court case that, without a specific law to deal with the recognition and enforcement of foreign judgments, access to justice may be too expensive and time-consuming.

In the absence of a specific Thai law on the recognition and enforcement of foreign judgments, some government bodies looked into the problem, in particular the Legal Execution Department and the Academic Office of the Office of the Attorney General (“The Attorney-General’s Office”).

On 27 August 2015, an academic seminar on the topic of “The Enforcement of Foreign Civil and Commercial Judgment among ASEAN Countries” was held in collaboration with Chula Unisearch, Chulalongkorn University for the following purpose:

1. To understand the problems which may occur when there is a transaction or legal relationship between the business operators in the ASEAN members, which are comprised of many countries, in case there is a dispute or legal action and a judgment is handed down but enforcement of the judgment against the debtor’s asset is not practicable,

2. To find the practical guidelines for universally resolving the problems which are acceptable to the ASEAN member countries,

3. To explore guidelines for improving the Civil and Commercial Code concerning the legal execution, and

4. To set up practical guidelines similar to those adopted by the European Union and to understand how practical such guidelines are.

In 2017, the Academy of Public Enterprise Policy, Business and Regulation (APaR) of University of the Thai Chamber of Commerce published their final report on “The Project for Recognition and Enforcement of Foreign Civil and Commercial Judgment in ASEAN”. This research project was carried out under the auspices of the Legal Execution Department. The purposes of the research were:

1. To study, analyze and compare the national law of each ASEAN member country including the developments of legal cooperation in the ASEAN region,

2. To systematically study the rules and methods to recognize and enforce foreign judgments in the ASEAN region including the study and comparison of the rules and methods of the recognition and enforcement of foreign judgments in other groups of countries around the world which were organized similarly to ASEAN, such as the European Union, and

3. To propose the guidelines for the recognition and enforcement of foreign civil and commercial judgments in ASEAN countries as well as the exclusions in order to establish greater clarity.

Upon reviewing the national laws of ASEAN members, APaR found that most of the ASEAN members are common law countries (the countries that use common law) such as Singapore, Malaysia and Brunei while others are civil law countries such as Thailand and the Lao PDR. It was also found that among the ASEAN countries, Thailand and Indonesia are the only member countries that do not have a law on the recognition and enforcement of foreign judgments while the Myanmar Court system adopts the doctrine of both comity and reciprocity but most of the member countries, namely Lao PDR, Vietnam, Cambodia, Malaysia, Singapore, Brunei and the Philippines adopt only the reciprocity concept.

APaR as the researcher recommended 2 steps to implement the recognition and enforcement of foreign judgments among ASEAN countries;

First, to arrange a bilateral agreement between the member countries of ASEAN to recognize and enforce their judgments, and

Second (as a long-term project), to arrange ASEAN agreement on the Recognition and Enforcement of Civil and Commercial Judgments”

As for Thailand, APaR recommended 2 alternatives to solve the problem; 1) to enact a new law, namely the Act on Recognition and Enforcement of Foreign Civil and Commercial Judgment, or 2) to amend the Civil Procedure Code (“CPC”).

To support the first alternative, APaR also proposed a draft Act and attached it to the Final Report. The draft Act comprising 18 Sections is divided into 4 Chapters. The essence of each Section is as follows:

Section 1: Name of the Act.

Section 2: The Act shall come into force on the next day after its publication in the government gazette.

Section 3: The president of the Supreme Court shall be in charge of the Act.

Section 4: Definitions of “Foreign judgment”, “Rendering court”, “Judgment creditor”, “Judgment debtor” and “Foreign court”.

Section 5: The central intellectual property and international trade court is the competent court.

## **Chapter 1**

### **General provisions**

Section 6: The court shall recognize and enforce the foreign judgment only when the foreign court also recognizes and enforces the judgment rendered by the Thai courts. The provision of this Act shall apply to the recognition and enforcement of the judgment of foreign country that enters into an agreement in writing with Thailand and such country must be declared in the list announced in the Royal Decree.

Section 7: The Act does not apply to the foreign judgments concerning bankruptcy, tax, family, succession, status of natural person or juristic person, and fine or penalty.

Section 8: The criteria for recognition and enforcement of a foreign judgment must be final under the law of the rendering country and be a judgment or order to pay money debt, and enforceable in the rendering court.

## **Chapter 2**

### **Denial of recognition and enforcement of foreign judgment**

Section 9: The court has the power to refuse the recognition and enforcement of a foreign judgment respective of the country where it was made if the debtor under the foreign judgment proves that the foreign judgment contradicts the judgment from another country which has been adjudicated on the same grounds, or the judgment arose from an unfair procedure, or the rendering court does not have jurisdiction.

Section 10: The competent court may refuse the recognition and enforcement of a foreign judgment if such recognition or enforcement will be against public order or good morals.

### **Chapter 3**

#### **The procedure of recognition and enforcement of foreign judgment**

Section 11: The judgment creditor shall file an application for recognition and enforcement of foreign judgment within 10 years from the day on which the foreign judgment becomes final.

Section 12: The judgment creditor shall submit to the court the certified original foreign judgment and Thai translation of the judgment which was certified as true and correct by a sworn translator, authority, or Thai consul or agent diplomatique in the country where the judgment was made.

Section 13: Once the court has received the application for recognition of enforcement, it shall deliver a copy of the application to the judgment debtor. Within 7 days from the filing date, the judgment creditor must request the officer to serve the application on the judgment debtor for any objection within 30 days from receipt.

Section 14: The court shall recognize and enforce the foreign judgment if no one makes an objection under Section 13.

### **Chapter 4**

#### **Recognition and Enforcement of Foreign Judgment**

Section 15: Once the foreign judgment is recognized by the Thai court, it is enforceable in the same manner as a Thai judgment.

Section 16: The provisions of the legal execution of a judgment or order of the court pursuant to the Civil Procedure Code shall apply mutatis mutandis.

Section 17: The judgment creditor shall file with the competent court an application for a decree.

Section 18: The court order on recognition and enforcement of a foreign judgment cannot be appealed unless such recognition and enforcement is against public order.

It can be seen from the draft of Section 6 that the draft Act adopts the concept of reciprocity and as a result, the provisions of the draft Act shall apply to the recognition and enforcement of a foreign judgment rendered by the court in the country that enters into an agreement with Thailand.

As for the second alternative proposed by APaR to resolve the problem, it is worth mentioning briefly.

By this second alternative, APaR recommended that some Sections of the current CPC should be amended and new provisions as the new Section 324 to Section 336, totaling 13 Sections be added to the CPC. Therefore, with this alternative, enactment of a new law as an Act on Amendment of the CPC is not required.

Summary of the substantial parts of second alternative and draft provisions are as follows:

Section 1: of the current CPC should add 3 new definitions, namely, “Foreign Judgement,” “The Rendering Court”, and “Foreign Court.”

Section 4. Should be added to the current Section 4 to provide for 2 competent courts i.e. the court in jurisdiction the debtor is domiciled or the court in the jurisdiction the assets are to be confiscated, is located to consider the application for the recognition and enforcement of a foreign judgement.

Section 324. The foreign judgment will be recognized and enforceable on the basis of reciprocity under the agreement to which Thailand is a contracting party. The agreement must be made in writing.

Section 325. This law will not apply to the recognition and enforcement of foreign judgements on the matters of bankruptcy, tax, family, estates, status of natural person and juristic person, fine and criminal damages.

Section 326. The foreign judgement shall be recognized and enforceable if it is an order or decision which is final in the country of the rendering court and it is judgement on money debt which is enforceable in the rendering court.

Section 327. The recognition and enforcement may be refused by the court if the judgement debtor proves that there is a difference between the foreign judgment and a judgement rendered by the court in other country in the same obligation.

Section 328. The court has the power to deny the recognition and enforcement of a foreign judgement if the recognition and enforcement shall be contrary to public order or good morals.

Section 329. The application of the foreign judgement creditor can be filed with the court within 10 years from the day on which the final judgement of the foreign court was rendered.

Section 330. The application must be attached with the original and certified copy of the foreign judgment, with the Thai translation by a sworn translator or certified by an authorized officer or Thai consul.

Section 331. A copy of the application shall be served on the judgement debtor by a court officer at the request of the judgement creditor. The judgement debtor is entitled to file an objection on any of the grounds as provided by Section 327 or Section 328.

Section 332. If none of the parties in Section 331 make an objection, the Court will issue an order to recognize and enforce the foreign judgement.

Section 333. The foreign judgement which has been recognized is enforceable as the judgement rendered by the Thai Court.

Section 334. The provisions relating to the enforcement of judgement or order of the Thai court shall apply to the foreign judgement *mutatis mutandis*.

Section 335. The application shall be filed with the competent court and expressly contains details of the names and addresses of the parties, evidence e.g. the foreign judgement, and list describing the assets to be enforced.

Section 336. The order of the Court recognizing and enforcing the foreign judgement is not appealable unless such recognition and enforcement shall be contrary to public order.

According to the public information made available so far, neither of the above 2 alternatives recommended by APaR has been implemented by the Thai government. Therefore, the status position of the legal problem of Thailand on the recognition and enforcement of a foreign judgement remains and has not been resolved.

## **Lao PDR's relationship with Thailand and its law on recognition and enforcement of foreign judgment**

Why is this research a case study of Lao PDR and Thailand? There are many reasons to support a case study of Lao PDR and Thailand.

1. From a historical perspective, Siam (Thailand) and Lao PDR (or "Laos", in the old day) have a long-established neighbour state relationship. The long relationship as a neighbour of Thailand is evidenced by the Inscription No. 1 engraved in B.E. 1835 in the King Ram Khamhaeng's reign, on which territory of Sukhothai was described as being adjacent to Vientiane and Wiang Kham (currently, in the Lao PDR) to the north. Inscription No. 2 was engraved approx. during B.E. 1884-1910 (believed to be in King Li Thai's reign). During mid-17<sup>th</sup> Buddhist Century, as discussed in the Inscription No. 2, Chaliang-Sukhothai was adjacent to "Chiangsaen, Phayao, Laos" to the northwest (Fine Arts Department, 1984).

There was both friendship and rivalry manners in the neighbour-state relationship. An intimate friendship was evidenced by the Si Song Rak Relic (currently in Loei Province). The Relic was erected in B.E. 2103 in King Setthathirath's reign to witness mutual support and agreement not to invade each other by Krung Si Ayutthaya (in King Somdet Phra Maha Chakkraphat's reign) and Krung Si Sattana Kanahut, currently Vientiane, Lao PDR (Ministry of Tourism and Sports, n.d.). However, at times, Thailand and Laos fought wars against each other. In B.E. 2155, during the reign of King Akatosarot of Thailand, Thai noblemen requested Krung Lan Chang to send out army to subdue Japanese soldiers who caused an insurgency in Krung Si Ayutthaya, but Krung Lan Chang's army attacked Mueang Lop Buri instead. This caused the Thailand-Laos relationship to start breaking up. Subsequently, in King Krung Thonburi's reign, the Thai army invaded Vientiane in B.E. 2321 in revenge for Laos' support given to Burma which resulted in Thailand's 2<sup>nd</sup> defeat in the Burmese-Siamese War. This invasion resulted in Laos becoming Thailand's dominion (Suriyamanee, 1988). In B.E. 2367, Chao Anouvong of Vientiane staged a rebellion against Thailand by leading the army to attack Nakhon Ratchasima. During this time, the famous heroine, Lady Mo, raised an army to fight against Chao Anouvong's until the later retreated. This event was enscripted

at the base of Thao Suranari Monument in Nakhon Ratchasima Province (Kanparit, 2012).

## 2. Thais and Laotians have an intimate cultural relationship.

Srisuworanan (1966) has studied Thai-Laotian history and opines that Thai people in the northeastern region are of the same ethnic group as those resided in Chao Phraya Watershed, and are from the same ethnic group as the northern Lanna people and Laotians in the Mekong Watershed (Luang Prabang, Vientiane and Nakorn Champasak). The people residing in the Chao Phraya Watershed call themselves “Thai”, while in the Mekong Watershed they call themselves “Laotian”.

Regardless of whether Thai and Laotian are of the same race, historical sources indicate several migrations of Laotians to Siam due to wars, which resulted social integration. After the first Burmese-Siamese War caused a population decrease in Krung Si Ayutthaya, prior to Thailand’s 2<sup>nd</sup> defeat in the Burmese-Siamese War in B.E. 2310, many Laotians from western side of the Mekong River and people in the vicinity were herded into Ayutthaya in order to protect the newly saved kingdom (Piyapan, 1998, cited in Prapakdee, 2015). King Taksin, the Great had also herded Laotian forces and royal families into Thailand when he invaded Krung Vientiane (Prapakdee, 2015).

The immigrations of Laotian to Thailand happened again in the reigns of King Rama IV and King Rama V in the Krung Rattanakosin era as a consequence of warfare, for instance, the Indochina Wars and World War II. Subsequent to the wars, it is reported that 413,670 Laotian moved to Thailand between B.E. 2518 to 2530. This is the highest number in history for Laotians migrating to another country. Out of ultimately, 233, 127 Laotians decided to settle in Thailand (Mettarikanon, 2005 cited in Suwat, 2002).

Songsiri (2016) has studied the records of the migration of ethnic Lao and their settlement in Thailand during the time of Krung Thonburi era and early Krung Rattanakosin era as found in some Thai chronicles, archives and historical papers. The interesting issue of the study is the records of the particular ethnic groups of Laotian who voluntarily migrated and those who were forcibly moved to Siam, and the provinces where Lao communities were settled down in Siam during that period.

Those Lao communities in Thailand can be found nowadays in various provinces of Thailand, such as in Saraburi, Rachaburi, Chantaburi, Amphur Nakornchasri (Nakornpathom province), Chachengsao, Petchburi and Bangkok. The first generation of the people from Laotians, who were forcibly moved, subsequently spread out and settled in various new villages where different ethnics group integrated.

3. Among all members of ASEAN, Lao PDR is the only landlocked country. This is interesting issue in terms of the requirements for cross-border transport by road.

As a landlocked country surrounded by Myanmar, China, Vietnam, Cambodia and Thailand, Lao PDR has to rely on the infrastructure of the neighboring countries especially, the land transport by road and rail in order to access sea terminals or ports in other countries. Therefore, to facilitate transport, four Thai-Lao friendship bridges across Mekong River have been constructed and another two will follow soon.

The first bridge across Mekong River to link Thailand with the Lao PDR (Nongkai-Vientiane) was originated from the desire of both countries after the World War II to facilitate communication between both countries. With the cooperation of Thai, Lao PDR and Australia, construction commenced in November 1991 and finished in March 1994 (Puttichoke, n.d.).

Following the first bridge, second, third and fourth friendship bridges were subsequently constructed for the following respective routes:

Mukdaharn Province-Suvannakhet Sub-district;

Nakorn Phanom Province-Muang Takag, Kammuan Sub-district and

Chiangrai Province-Bandon, Muang Huaysai, Borkaew Sub-district

(Campus Star, 2016).

The MOU for the project of the fifth bridge for Bungkarn Province-Muang Paksun, Borli-kamsai Sub-district was signed in June 2019 (Department of Highways, 2019) and its construction is now in progress. As for the sixth bridge for Ubonratchathani-Salawan Sub-district, the design has now been completed (Thansettakij, 2024).

The overview of all projects covering the construction of 6 bridges to enhance the road transport connection between Thailand and Laos was prepared by Foreign Affairs Division, Office of the Permanent Secretary of Interior which is illustrated in the picture below.

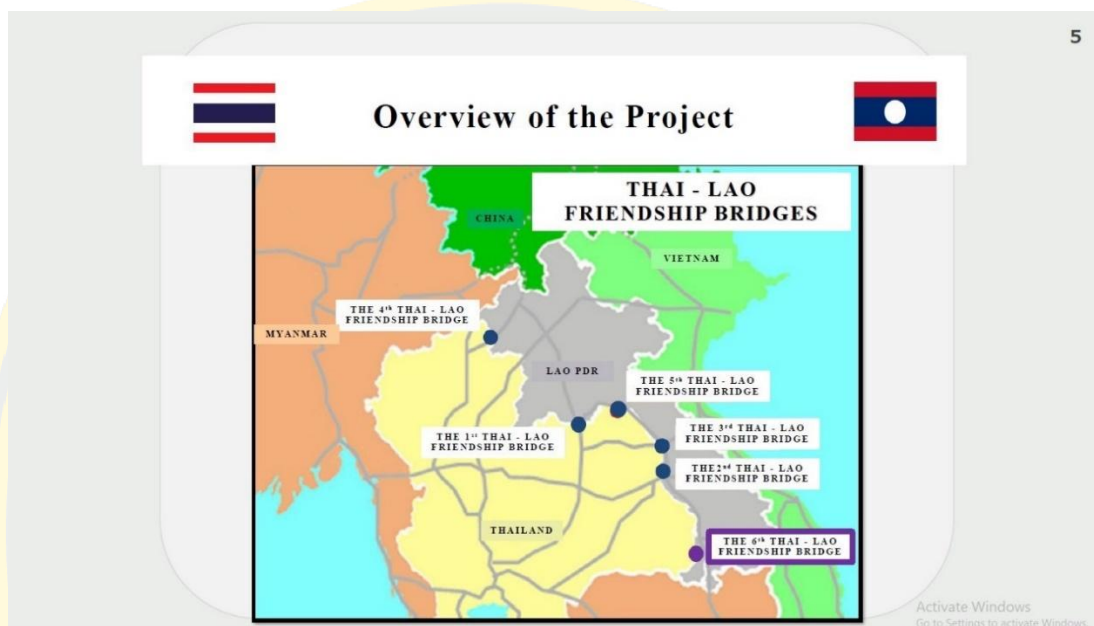


Figure 2 Overview of the six bridges project

Source: Foreign Affairs Division, Office of the Permanent Secretary for Interior (2024)

Thailand and Lao PDR have faced the severe problem of the continued lower water levels of the Mekong River and construction of many dams in Lao PDR and China which have caused problems for transportation along the Mekong River.

The Thai-Sino-Lao High Speed Railway Project (“The project”) has become an alternative to improve the cross-border transport between Thai and Lao PDR in this Sub-Region when the governments of Thai, Lao PDR and China signed the Memorandum of Cooperation on railway linkage between Nongkai Province of Thailand and Vientiane in the Lao PDR on 25-27 April 2019 in Beijing. The railway linkage Project is part of the Belt and Road Forum for International Cooperation (Prachachat Online, 2019).

As per the Project, the construction when completed will link Kunming in China to Bangkok via Luang Prabang and Vientiane in Lao PDR and Nakorn Ratchasima Province (Theparat & Hongtong, 2019).

The route of the project is illustrated in the map below.



Figure 3 High-speed rail project on Indochina Peninsula

Source: Kevinyeo (2018)

In July 2024, the train service between the central railway station in Bangkok (Krung Thep Aphiwat Station) and Vientiane (Khamsavath Station) was available. (The Nation, 2024)

In addition, the cross-border transport by road via the six Thai-Lao friendship bridges and Thai-Sino-Lao High Speed Railway Project, air transport also enhances connection between Thailand and the Lao PDR as there are many airlines providing flight services from Thailand to Lao PDR and vice versa, such as Thai Airways, Lao Airlines, Vietnam Airlines, China Eastern Airlines and Air Asia. Some of these airlines provide direct low-cost flight services. However, the airfares for a round-trip ticket of Bangkok-Vientiane flight depends on booking times as well. The airfares for Air Asia, a low cost airline, for a round trip direct flight in June 2024 ranged from THB 3,820 to THB 4,120 with an average of THB 3,836 per flight (Air Asia, 2024) while the airfares for Thai Airways in the same month and route

were in the range of THB 7,732-THB 11,345 with an average of THB 10,738 per flight (Thai Airways, 2024).

With the friendship bridges, high speed rail link project and air flight services, it is fair to say that the relationship and the communication between Thailand and Lao PDR will become much closer.

4. In terms of bilateral trade, there have been some reserches over the past several years including a recent paper issued in 2023 suggesting that the Lao PDR is not only a close neighbouring country of Thailand but is also considered to be an important trading partner of Thailand.

Sirinukul (2008) has studied the trade records between Thailand and the Lao PDR between 1997-2009 and came to a conclusion that the major goods inported by Lao PDR from Thailand were fuels, utomobiles and spare parts, chemical products, engines, electronic equipment, sugar, polyethylene resin, etc., while Thailand imported mostly natural products from Lao PDR, e.g. logs, lumber, ore, live animals, etc. The records suggest close trade between the 2 nations.

From the research conducted by Ngwitulsatit, Didyasarin, and Chraoensrowattanakul (n.d.) it was found that the trend of the types of the goods and products imported and exported by and between Thailand and Lao PDR during 2014-2016 remains unchanged as fuel or electronic equipment and lumber were still in the top ten products traded between the 2 nations. However, one interesting issue is that in 2015, Thailand imported electric power from Lao PDR with a total value of 13,548.95 million baht. Whong (2019) states that there are 5 planned large-scale dams in Laos. Though the Lao government sees power generation as a way to boost the country's economy, the projects are controversial because of their environmental impact, displacement of villagers, and quesitonable financial arrangements.

Notwithstanding the above controversies, the press release by the Ministry of Energy reveals the policy of Thailand to continue to buy electricity from Lao PDR as per the Thai-Lao MOU in line with the new Power Development Plan (or so called "PDP 2018") under which Thailand willl purchase around 3,000-3,500 megawats of electricity over the next 20 years from Lao PDR (Energy Center, 2019).

Although electricity is a new import product from Lao PDR which may generate significant national income and increase GDP in the near future. The recent

trade records from the first half of 2019 indicate the total value of trade between the 2 nations was 16,708.80 million baht with a trade balance of 2,996.15 million baht in favor of Thailand. (Department of Foreign Trade, n.d)

A recent report by Pawitra Muangsakul of the Department of Foreign Trade issued in January 2024 on the economics situation of the international trade of Lao PDR for December 2023 suggests the economic growth of Lao PDR for the year 2023 had a positive trend as a result of tourism, transport and logistics although Lao PDR faced the challenges of the currency depreciation of the Laotian Kip and a high inflation rate. The report also suggests that Thailand is still an important trading partner for Lao PDR because of the fact that the total value of Lao PDR's international trade for the year 2023 was USD 7,306.85 million and the top 3 markets of Lao PDR export goods were China (37.72%), Vietnam (22.24%) and Thailand (16.61%) respectively but for imported goods, 42.46% were from China, 38.56% from Thailand and 4.84% from Vietnam. (Department of Foreign Trade (2024) retrieved from ditp.go.th)

5. Thailand and the Lao PDR have contractual relationships in many areas through various agreements in the form of both bilateral agreements and multilateral agreements, *inter alia*, the followings are the Agreements, Memorandums of Understanding, Treaties, Framework Agreements, Recognition Arrangements, Protocols and Conventions (Department of Treaties and Legal Affairs, Ministry of Foreign Affairs, n.d.):

#### **Bilateral agreements**

As a neighboring country of Thailand, Lao PDR has entered into many bilateral agreements with Thailand, such as:

1. Agreement between the Government of The Kingdom of Thailand and the Government of Lao People's Democratic Republic on the construction of the 5 Thai-Lao Friendship Bridge (Bueng Kan-Bolikhamxai).
2. Agreement between the Government of The Kingdom of Thailand and the Government of The Lao People's Democratic Republic on The Exemption of Visas for Holders of Official Passports.
3. Agreement on Transit of Goods between The Kingdom of Thailand and The Kingdom of Laos.

4. Agreement between the Government of The Kingdom of Thailand and the Government of The Lao People's Democratic Republic on Road Transport.

5. Agreement between the Government of The Kingdom of Thailand and the Government of The Lao People's Democratic Republic for the Promotion and the Protection of Investments.

6. Agreement between the Government of The Kingdom of Thailand and the Government of The Lao People's Democratic Republic for the Avoidance of Double Taxation and The Prevention of Fiscal Evasion with Respect to Taxes on Income.

7. Financial Assistance Agreement on Hongsa District-Ban Chiangman (Chomphet District, Luang Prabang Province) Road Construction Project between Neighbouring Countries Economic Development Cooperation Agency (Public Organization) (NEDA) and Ministry of Finance the Lao People's Democratic Republic Dated 26 November 2014

8. Memorandum of Understanding between The Government of the Kingdom of Thailand and The Government of the Lao People's Democratic Republic Regarding Cooperation on the Development of Electrical Energy in the Lao People's Democratic Republic.

9. Memorandum of Understanding on The Initial Implementation at Mukdahan, Kingdom of Thailand and Savannakhet, Lao People's Democratic Republic of the Agreement between and among the Governments of The Kingdom of Cambodia, The People's Republic of China, The Lao People's Democratic Republic, The Union of Myanmar, The Kingdom of Thailand, and The Socialist Republic of Viet Nam for Facilitation of Cross-Border Transport of Goods and People.

10. Memorandum of Understanding on Cooperation on Science, Technology and Innovation between The Ministry of Science and Technology of The Kingdom of Thailand and The Ministry of Science and Technology of The Lao People's Democratic Republic (2014).

11. Memorandum of Understanding between The Government of The Kingdom of Thailand and The Government of The Lao People's Democratic Republic on Cooperation to Combat Trafficking in Persons, Especially Women and Children.

12. Arrangement between and among the Government of the Lao People's Democratic Republic, the Kingdom of Thailand, and the Socialist Republic of Viet Nam on the Operation of the Tourism Road Transport.

13. Memorandum of Understanding Between the Government of the Kingdom of Thailand and The Government of the Lao People's Democratic Republic on Cooperation in the Promotion of the Contract Farming Scheme under ACMECS

14. Treaty between The Kingdom of Thailand and The Lao People's Democratic Republic on the Transfer of Sentenced Persons and on Co-Operation in the Enforcement of Penal Sentences.

15. Treaty on Extradition between The Kingdom of Thailand and The Lao People's Democratic Republic.

#### **Multilateral agreements**

Lao PDR is not only a neighboring country of Thailand but also a member country of the GMS, a sub-regional group of countries and; ASEAN, a regional grouping of countries to which Thailand is a member. There are various multilateral agreements signed by the Lao PDR, Thailand and other countries, such as:

1. ASEAN Framework Agreement on the Facilitation of Goods in Transit.
2. ASEAN Framework Agreement on Mutual Recognition Arrangements.
3. ASEAN Mutual Recognition Arrangement for Bioequivalence Study Reports of Generic Medicinal Products.
4. Agreement Establishing a Food and Fertilizer Technology Centre for The Asian and Pacific Region.
5. ASEAN Sectoral Mutual Recognition Arrangement for Good Manufacturing Practice (GMP) Inspection of Manufacturers of Medicinal Products.
6. Agreement on the Establishment of the Regional Secretariat for the implementation of the ASEAN Mutual Recognition Arrangement on Tourism Professionals.
7. ASEAN Agreement on Medical Device Directive.
8. Second Protocol to Amend the Protocol Governing the Implementation of the ASEAN Harmonized Tariff Nomenclature.
9. Second Protocol to Amend the ASEAN Comprehensive Investment Agreement.

10. Third Protocol to Amend the ASEAN Comprehensive Investment Agreement.

11. Protocol Amending the Revised Memorandum of Understanding on the Establishment of the ASEAN Foundation.

12. Agreement on the Rescue of Astronauts the Return of Astronauts and the Return of Objects Launched into Outer Space.

13. Memorandum of Understanding between The Governments of the Member States of the Association of Southeast Asian Nations and the People's Republic of China on Customs Cooperation.

14. Memorandum of Understanding on ASEAN Cooperation Mechanism for Joint Oil Spill Preparedness and Response.

15. Memorandum of Understanding for the Establishment of the Greater Mekong Railway Association.

16. Memorandum of Understanding Between the Governments of Australia, the Lao People's Democratic Republic and The Kingdom of Thailand relating to The Mekong River Bridge Between Lao PDR and Thailand.

17. Memorandum of Understanding on the joint cooperation in further accelerating the Construction of the Information Superhighway and Its Application in The Greater Mekong Subregion between and among The Ministry of Posts and Telecommunications of The Kingdom of Cambodia, The Ministry of Industry and Information Technology of the People's Republic of China, The Ministry of Posts and Telecommunications of The Lao People's Democratic Republic, The Ministry of Communication, Posts and Telegraphs of Republic of the Union of Myanmar, The Ministry of Information and Communication Technology of The Kingdom of Thailand and The Ministry of Information and Communications of The Socialist Republic of Viet Nam

18. Memorandum of Understanding Between and among the Governments of the Lao People's Democratic Republic, The Kingdom of Thailand and The Socialist Republic of Viet Nam on The Initial Implementation of The Agreement Between and among the Governments of The Kingdom of Cambodia, The People's Republic of China, The Lao People's Democratic Republic, The Union of Myanmar, The Kingdom of Thailand, and The Socialist Republic of Viet Nam for the facilitation

of Cross-Border Transport of Goods and People (IICBTA) at Lao Bao, The Socialist Republic of Viet Nam and Dansavanh, The Lao People's Democratic Republic, and at Savannakhet, The Lao People's Democratic Republic, and Mukdahan, The Kingdom of Thailand.

The Annex 10: Conditions of Transport under GMS-CBTA provides technical details which apply to contracts for the carriage of goods for reward by road by motor vehicle when the place of handling over the goods to the carrier and the place of delivery to the consignee are situated in the territories of different Contracting Parties. As per Article 10 (c) (i), an action for compensation based on this Annex may be brought in the courts of the Contracting Parties:

- where the carriage originated from or was destined to;
- where the loss or damage occurred, if localized;
- where the principal place of business of the carrier is located; or
- where the habitual residence of the claimant is located.

It is apparent, the voluminous Agreements in various forms of instruments signed by Thailand and Lao PDR clearly suggest the very close contractual relationship between them and their obligations thereunder.

6. While Thailand may have advantages over Lao PDR in some respects, e.g. GDP, infrastructure, education and public health, it does not have a specific law to govern the matter of recognition and enforcement of foreign judgments. Unlike in the Lao PDR which has enacted a domestic law, namely the Law on Civil Procedures (No.13/ NA, dated 4 July 2012). This new version of this law on Civil Procedures came into force on 1 August 2012 and superseded the law on Civil Procedures No. 02/ NA, dated 17 May 2004 (Section 370, Law on Civil Procedures (amended)).

Article 127 of Law on Civil Procedure (No.35/ PDR dated 14 June 2004) dealing with the recognition of a decision of a foreign court provides that:

“The Lao People's Democratic Republic acknowledges and executes the decisions of foreign courts through its embassy, or the consular or representative offices of the Lao People's Democratic Republic in such foreign country.

The following decisions shall be translated into the Lao language and certified by the People's Court of Lao People's Democratic Republic:

Decisions of those countries which are signatories to treaties to which the Lao People's Democratic Republic is also a signatory or party;

Cases that do not impact [adversely] on the sovereignty or contradict the laws of the Lao People's Democratic Republic; [and] Decisions that do not violate the regulations on [civil] procedures and do not contradict the laws and regulations relating to security and public order.”

However, the above Civil Procedure Law of Lao PDR was amended and improved in 2012 by the Law on Civil Procedures (amended) No. 13/ NA dated 4 July 2012. Article 370 of this new law provides that this law supersedes the Law on Civil Procedures No. 02/ NA dated 17 May 2004 and all regulations, provisions which contradict this new law shall be abrogated.

As a result of such legal amendments and improvement, the old provisions regarding the recognition and enforcement of foreign judgements were substantially updated by improving Article 361 and Article 362, and adding new 6 Articles (Articles 363 to Article 368) as new provisions of Part XVII, International Cooperation in Civil Proceedings.

The headings of Articles 362-368 of Part XVII are self-explanatory in that they deal with different issues while the contents of each Article provide details of the heading as follows:

**Article 362 (improved). Recognition of the Decisions of Foreign Courts.**

Lao PDR recognizes and enforces the decisions of foreign courts through the embassies, consults or representative organizations of the Lao PDR in foreign countries, and are translated into Lao language. The court of Lao PDR will consider and make decision on recognition in the following cases:

1. Decisions of the countries which are members of the international treaties to which Lao PDR is a party;
2. Such decisions were not involved with the sovereignty and not contrary to the laws of the Lao PDR;
3. Such decisions do not affect the public peace and order of the Lao society.

**Article 363 (new). Application for Recognition of Decisions of Foreign Courts**

The application for considering the recognition of decisions of foreign courts and taking them for execution in Lao PDR must be submitted through the Ministry of Foreign Affairs to further submit to the Ministry of Justice for consideration and verification before submitting to competent court to consider pursuant to the laws and regulations.

The application for recognition of the decisions of foreign courts shall comprise the following contents:

1. Name, surname and address of the applicant;
2. Name, surname and address in Lao PDR of the person who lost the case according to the decision of foreign court;
3. The request which specifies the amount of debt, assets which are outstanding;
4. Signature of the applicant,

The application must be translated into the Lao language and certified by the notary office as a correct translation.

The expenses for the proceedings in this case shall be in compliance with the laws on court fees.

**Article 364 (new). Documents Attached with the Application**

The documents attached with the applications must comprise the Followings:

1. The decision of the relevant foreign court;
2. Letter of the relevant foreign court confirming that such decision is validly final;
3. The relevant international treaty to which the Lao PDR is a party;
4. Other relevant documents.

These documents must be translated into the Lao language and certified by the notary office as a correct translation.

**Article 365 (new). The process of Consideration of the Recognition of the Decisions of Foreign Courts.**

After receiving the application for the recognition of the decision of the foreign court the relevant court of Lao PDR must compile the documents to form a case file and lawsuit and assign a judge to study.

The court must summon the person living in Lao PDR who lost the case according to the decision of the foreign court to acknowledge and give an explanation to the court.

The court must bring the case for a hearing and a decision within thirty days.

The court must invite the chief of the public prosecutor organization of its level to participate in the consideration of such issue.

**Article 366 (new). Decision to Recognize or Not Recognize the Decision of Foreign Court**

The court may consider and decide to recognize or not recognize the decision of the foreign court for which the request is made.

The court will consider and decide not to recognize the decision of the foreign court in any of the following cases:

1. Such decision is still in the process of proceedings which is not yet a valid final decision;
2. The person who lost the case in the decision of the foreign court has not participated in the proceedings and the decision was rendered in default of the appearance of such person;
3. The case adjudicated by the foreign court falls under the jurisdiction of the courts of the Lao PDR;
4. Such decision is contrary to the constitution and laws of Lao PDR;
5. Other issues relating to the decision of foreign court.

**Article 367 (new). Notification on Recognition or Non-Recognition of the Decision of Foreign Court**

When the court of the Lao PDR has considered and rendered a decision to recognize or not recognize the decision of foreign court, such court must forward the decision to the litigants and to the chief of the public prosecutor organization for information. In case the litigants are in foreign countries, the court shall send the said

decision through the Ministry of Justice for further proceeding in accordance with the regulations.

**Article 368 (new). Appeal or Objection Request Against the Decision**

The litigants or the chief of the public prosecutor organization have the right to appeal or make an objection against the decision of the court of Lao PDR which recognizes or not recognizes the decision of the foreign court within twenty days from the date of acknowledging the decision.

When there is an appeal or an objection against such decision, the relevant court must send the case file to the court of appeal for considering the reasons for the appeal or the objection.

The judgment of the court of appeal relating to this issue shall be deemed the valid final decision that cannot be overruled.

Although the provisions of Part XVII of the law on Civil Procedures of Lao PDR have been substantially improved, Article 360 remains unchanged; it provides that in case there is no agreement or treaty with other countries, Lao PDR may accept the case for consideration on a cooperation basis but it shall not be contrary to the constitution and laws of Lao PDR.

Notwithstanding the above-mentioned Article 360 which seemingly suggests an alternative, Article 362 of the same law provides for a condition for Lao PDR courts to consider and decide the case if it is the judgment of the member country of any treaty to which the Lao PDR is also a party. As a result of this crucial condition, the foreign decision or judgement rendered by the court in the country which is not a member of the international treaty or agreement to which the Lao PDR is not a party will neither be recognized nor enforceable in the courts of the Lao PDR.

It is interesting to note that Puntawich (2010) found during her study visit to the Supreme Court of the Lao PDR that judgments of the Thai Courts, Vietnam Courts and the Courts of People's Republic of China can be cited, enforced and accepted by the Lao PDR's Courts.

Lao PDR has entered into 3 international agreements with 3 countries and such agreements have relevance to the matter of recognition and enforcement of foreign judgments as follows (APaR, 2017):

Treaty between the Lao People's Democratic Republic and the Socialist Republic of Vietnam on Mutual Assistance in Civil and Commercial Matters dated 16 July 1998 (or so called "Vietnam-Lao Treaty").

French-Laos Agreement on Mutual Assistance Establishing a Simplified Recognition and Enforcement Procedure of 16 November 1956.

Treaty between the Lao People's Democratic Republic and the Democratic People's Republic of Korea on Mutual Assistance in Civil and Criminal Matters dated 20 June 2008.

Although the Civil Procedure Law of Lao PDR was amended in 2012, the condition that the foreign judgments or decisions to be recognized and enforceable in Lao PDR must be rendered in the countries which are signatories to treaties to which the Lao People's Democratic Republic is also a signatory or party, remains unchanged and is still stated in Article 362 of the new law.

Therefore, the Lao PDR will recognize and enforce foreign judgments rendered in those countries that have entered into an agreement in the form of either treaty or bilateral agreement with Lao PDR to recognize and enforce judgment, subject to the conditions and restrictions as stipulated in the Civil Procedure Law of Lao PDR as amended in 2014.

In other words, under Lao law, the Courts in the Lao PDR will recognize and enforce a foreign judgment if the Lao PDR and the country which handed down the foreign judgment are parties to a bilateral or multiparty agreement on the recognition and enforcement of foreign judgments. (Chanthala & Santivong, 2017)

In consequence of the above restrictions under Lao PDR laws, judgments rendered by the Thai courts will be recognized and enforceable in the Lao PDR only when Thailand and the Lao PDR have entered into a bilateral agreement or multilateral agreement or treaty on the recognition and enforcement of judgments.

APaR (2017) has summarized the steps and rules for enforcement of foreign judgment by Lao PDR courts based on the Act on enforcement of judgments (as amended) No. 04/ Sor Por Chor dated 25 July 2008 that:

1. Once the competent court of Lao PDR has considered the foreign judgment and decided to enforce it, such decision must be served on the parties and

Chief Public Prosecutor and, in case of any party domiciled overseas, the service of decision must be made through the Ministry of Justice;

2. As a civil case, the request for enforcement is subject to court fees at the rate of 2% of the claim and payment of other court fees;

3. The decision of Lao PDR's court to accept the enforcement must be forwarded to the legal execution department of the court within 30 days from the date of the decision in the same manner of normal legal execution of a judgment of Lao PDR's court;

4. Once the legal execution department has received the decision, it must, within 30 days from receipt of the decision, summon the parties to come to the legal execution department and notify them of the decision and shall also recommend and persuade the party to comply with the decision within 60 days, and

5. If the party having the obligation to comply with the decision fails to comply with the decision within 60-day period, the legal execution department shall investigate and prepare a list of assets, issue an order to attach or confiscate the assets for further sale in an auction.

In conclusion, there are several reasons to support that the research into the problem: Reduction in Litigation Costs by Making Available Laws on the Recognition and Enforcement of Foreign Judgments, should be a case study for Thailand and Lao PDR. The long relationship and close connection between the 2 nations in many aspects is clear proof of this assertion as supported by, *inter alia*, their history, ethnic beliefs, and neighborliness, trading partnership and various contractual agreements in the form of bilateral and multilateral agreements. More importantly, the geographical condition of the Lao PDR as a landlocked country that relies on inland transport through its neighboring countries, especially, Thailand, is also key issue.

How much the litigation costs to be incurred in the reciprocal enforcement of their judgments would be reduced if Thailand had a specific law on this matter and entered into a bilateral agreement with the Lao PDR to reciprocally recognize and enforce judgments? What educational tool(s) should be applied and how to prove the hypothesis of the topic? These questions will be further discussed in this research.

### **General information and importance of costs**

This part of the documentary review will study aspects, other than laws, which comprise 4 issues, namely 1) Cost, 2) Accounting and cost accounting etc., 3) ABC: Activity based costing, and 4) Research methodology, data collection and Data analysis.

#### **1. Cost**

Before discussing the topic of Accounting and Cost Accounting and others, study should commence from the meaning of the term “Cost.” This is because “Cost” is required for business survival and may cause a business to suffer if the cost is inaccurately calculated, e.g. higher or lower than reality (Pajongwong, 2018).

There is a variety of meanings of “Cost” defined from different perspectives:

In production, research, retail and accounting, “Cost” is the monetary value that has been used to produce something and therefore is not available for use anymore. In business, cost may be one of acquisitions in which case the amount of money expended to acquire it is counted as cost. Costs are often described based on their timing and their applicability (The Free Dictionary by Farlex, n.d.)

Mee-amphol (2017) Cost is defined as cash or thing equivalent to cash paid to acquire goods or service which are beneficial to present or future activity. Therefore, to gain the utmost benefit for the present or future activity, an attempt is made to reduce the cost to a minimum in order to bring the utmost profit to the activity.

Rodwanna (2017) stated that in terms of business and accounting, cost is the resource sacrificed to acquire goods or service. The sacrificed resource includes money, time and labour. In conclusion, costs are expenses incurred in acquiring goods or service which may be paid by cash, assets, stock or services or indebtedness including the monetary loss which directly involves the acquisition of the goods or service.

Tongsukhowong (2005) Cost means the value of resources sacrificed to acquire goods or services and can be measured in monetary value in the manner of the reduction in asset or increase of debt. When the cost has been incurred and the activity has totally utilized it, the cost is deemed to be an “Expense”. This approach in the sense that cost is expense is supported by Narmpoch (2010) who stated that cost

means the value of resources used up in production or service as the part so called “Input value” of the cost system and, therefore, it is cash or expense paid or incurred to acquire the service or product. In fact, expense, cost and loss are the same, but have different meanings for the purpose of usage. Therefore, expense shall mean the cost incurred in acquisition in a certain period, e.g. salary paid by the firm.

“Cost” is also defined in the short term, for example, cost means the resource sacrificed or foregone to achieve a specific objective (Horngren, Foster & Datar, 1997 cited in Moore, 1998). Similarly, Narmpoch (2010) stated that cost is the value of resources used in production or service. Also, cost is a measurement, in monetary terms, of the resources used for the purpose of the production of goods or rendering of services (The Institute of Cost Accountings of India, n.d.).

Cost means the value measurement of resources which are used up for a specific purpose. It is measured in monetary value and is comprised of 3 concepts, as follows:

1. Measurement of volume of the resources used, i.e. quantity of raw material, labor and other services measured to ascertain the used volume
2. Measurement in monetary unit; since each type of resource has its own unit of measurement, transformation of such different unit measurements into monetary unit is necessary in order to ascertain the value of all resources used
3. The measurement must always relate to the objective (Robert & Glenn, 1981 cited in Klaharn, 2007).

In conclusion, based on the above meanings of the term, it can be seen that the key concept of the term can be concluded, that “Cost” is an expense(s) incurred or resource(s) sacrificed to acquire goods or services or for a specific purpose, provided that its value can be measured in monetary units.

Once the cost has been incurred and the activity has totally utilized it, cost is deemed an expense.

Cost sounds straightforward and uncomplicated. However, this is not the case because, when considering terminology, there are a lot of other relevant terms which are quite complicated such as cost object, cost behavior, cost driver, cost pool, direct cost, variable cost, etc. All these relevant terms will be further addressed and discussed in this report.

## **2. Accounting, cost accounting and etc.**

This part of the research will address 6 issues; 1) Accounting, 2) Cost accounting, 3) Cost classification, 4) Cost allocation, 5) Cost estimation, and 6) Terminologies.

### **2.1 Accounting**

Accounting is important and should be addressed herein because it is a necessary function for decision making, cost planning, and measurement of economic performance. Two important types of accounting for business are managerial accounting and cost accounting. The history of accounting dates back to ancient civilizations in Mesopotamia, Egypt and Babylon. Modern accounting as a profession started in early the 19<sup>th</sup> century (Tuovila, 2020). Its purpose is to accumulate the financial records for use in economic decision. Accounting may be divided into financial accounting and management accounting (Rattanatraipob, 2018). The importance and types of accounting are pointed out by Rodwanna (2017) who stated that accounting is an important economic tool and, in terms of information users, can be divided into 2 major types; 1) for external users, e.g. creditors and investors, and 2) for internal users, e.g. the management and operator.

Accounting is defined as the process of recording financial transactions pertaining to a business. The accounting process includes summarizing, analyzing, and reporting these transactions to oversight agencies, regulators, and tax collection entities. The financial statements used in accounting are a concise summary of financial transactions over an accounting period, summarizing a company's operations, financial position, and cash flow (Tuovila, 2020).

Also, it denotes the process of keeping, recording, classifying and making a summary of information concerning economic events in a monetary form. The final stage of accounting is to provide financial information for the benefit of various people and all interested persons both in the internal and external operations of a business (Rodwanna, 2017).

As a system, the accounting system is a system used to identify, analyze, measure, record, summarize, and accumulate relevant information to an interested party (Ainsworth et al, 1997 cited in Moore, 1998). The accounting system is a system to keep financial information consisting of forms or documents,

accounting records, and reports, as well as the methods and tools used in gathering information about operations and finances of any particular business to be provided to the management in order to enable them to accomplish their responsible duties perfectly, and also to present information to interested external persons, e.g. the shareholders, creditors and government sectors (Veerapariya, Leekpai & Hawat, 2013).

## 2.2 Cost accounting

Cost accounting is not only used in reporting the outcome and operations in the financial statement as a measurement of loss and profit of period cost, but also used for other purposes, namely to calculate manufacturing cost, to plan and control, to fix the sale price of any goods or services, as a decision-making tool and to assess performance (Rodwanna, 2017). The accuracy of cost accounting information is important. Therefore, in some countries, government bodies have been set up to oversee the standard of cost accounting in order for contractors, who enter into a contract with the government, to show details of the relevant costs in the same standard in case of bidding with the government. In the United State, the government body is the Cost Accounting Standards Board (CASB) (Rattanatraipob, 2018).

Cost accounting is a system that measures and reports the financial and other information related to the organization's acquisition or consumption of resources. It provides information for both management accounting and financial accounting (Horngren, Foster, & Datar, 1997 cited in Moore, 1998). Also, it denotes a process of recording account for production and service businesses. It is part of financial accounting concerning the financial report to be presented to external persons, and at the same time, it is also part of managerial accounting or administrative accounting which has relevance to the planning and decision making of management (Rodwanna, 2017).

## 2.3 Cost classification

Rattanatraipob (2018) states that the different objective will result in different classifications of cost. Its overview aims to the planning, controlling and decision making in order to achieve the organization's targets. Therefore, cost classification is designed to accord the purpose of information used for:

2.3.1 Decision making: The cost information to be taken into consideration is comprised of Different cost, Relevant cost, Avoidable cost, Sunk cost, Future cost and Opportunity cost.

2.3.2 Cost object: This particular classification is focused on Cost object to fix sale price, profit making from production, control of expenses or for other purposes. There are 2 types of classification, namely Direct cost and Indirect cost.

2.3.3 Cost behavior: This classification is for the purpose of cost forecast in accordance with cost behavior which may be relevant to Variable cost, Fixed cost, Mixed cost and Step cost.

2.3.4 Manufacturing companies: The production business normally divides cost into 2 groups, i.e. 1) Manufacturing cost comprises direct materials, direct labor and manufacturing overheads, and 2) Nonmanufacturing cost consists of selling expenses and administrative expenses.

2.3.5 Preparing financial statements: For this purpose, the Manufacturing cost is categorized as Product cost, and Nonmanufacturing cost is Period cost.

Product cost may be referred to as Inventoriable cost which comprises direct materials, direct labor and manufacturing overheads.

Period cost is the cost which is not Product cost but Nonmanufacturing cost which normally incurs in a certain accounting period such as sale commission and rental. The example of Period cost is selling expense and administrative expense.

1. Financial statement reporting: This may have relevance to Announcement No. 2 (revised in 2017) of the Federation of Accounting Professions regarding inventory under which the inventory account shall be comprised of raw materials, work in process and finished goods in case of a production business.

Pajongwong (2018) Cost is classified according to the different purposes as follows:

1. By Functions: This comprises 2 major parts; 1) Manufacturing cost, and 2) Nonmanufacturing cost

2. By Cost behavior: This comprises Variable cost, Fixed cost, Semi-Variable cost or Mixed cost and Semi-fixed cost.

3. By Average cost: Cost will be divided into Total cost and Unit cost.

4. For planning and control: This has relevance to Budget cost and Standard cost.

5. For decision making: The cost information to be taken into consideration by management for making a decision is Differential cost, Avoidable cost, Opportunity cost and Sunk cost.

6. By controllability (controlling cost): For this purpose, cost is divided into Direct cost and Indirect cost.

7. By Product cost and Period cost: This cost can be divided into Product cost and Period cost.

8. By Production cost: This comprises of Prime cost and Conversion cost.

Garrison, Norren, and Brewer (2018) have proposed a summary of the Cost classification for managerial accounting according to the objectives of the classification as follows:

Table 1 Summary of the cost classification for managerial accounting according to the objectives of the classification.

<b>Objectives</b>	<b>Classification</b>
Cost object	1. Direct cost 2. Indirect cost
Manufacturing business	1. Manufacturing costs 1.1 Raw materials 1.2 Direct labor 1.3 Manufacturing overhead 2. Nonmanufacturing costs 2.1 Selling costs 2.2 Administrative costs
Financial reporting	1. Product costs (inventoriable costs) 2. Period costs (expenses)

Table 1 (Continued)

Objectives	Classification
Cost behavior	<ol style="list-style-type: none"> <li>1. Variable costs (indirect proportion)</li> <li>2. Fixed costs</li> <li>3. Mixed costs (comprising variable costs and fixed costs)</li> </ol>
Decision making	<ol style="list-style-type: none"> <li>1. Differential cost</li> <li>2. Sunk cost</li> <li>3. Opportunity cost</li> </ol>

Beside the above classification, cost can be classified in accordance with the following flowchart:

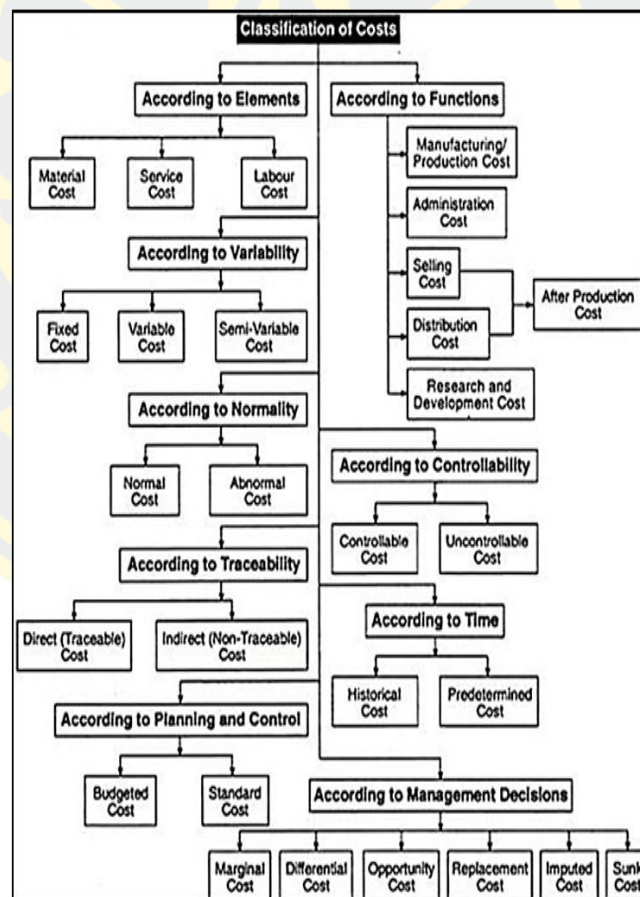


Figure 4 Classification of costs

Source: Indiafreenotes (2024)

## 2.4 Cost allocation

The need to address “Cost allocation” is its importance. That is because the ABC system which is one of the key issues discussed herein is based on the premise that activity causes the costs and activity costs are allocated to cost objects on the basis of the cost of activities consumed (Morse, David, & Hartgraves (1991) cited in Soekardan, 2016). Cost allocations are need to value inventory for external reporting purposes, for planning and monitoring the cost of activities and processes, and for various short term and long-term strategic decisions (Anderson, 1995, Cooper and Kaplan, 1998; Drury 2004 cited in Abusalama, 2008)

Cost allocation is the process to identify, aggregate and assign costs to cost objects. A cost object is any activity or item for which you want to separately measure costs. Examples of cost objects are a product, a research project, a customer, a sales region, and a department. Cost allocation is used for financial reporting purposes and also for the calculation of profitability at the department or subsidiary level and for derivation of transfer prices between subsidiaries (Bragg, 2019).

Generally, organizations allocate cost for specific reasons. For example:

2.4.1 To make decisions regarding the allocation of resources-Costs provide an estimated measurement of the resources that the organization is using to provide a product or service.

2.4.2 To provide motivation to managers and employees-Managers may use cost allocation to encourage (or discourage) specific behaviors.

2.4.3 To justify cost products or service-Cost allocation allows an organization to recover the direct costs of the products or services and a fair portion of the overhead costs that are necessary to manage the organization.

2.4.4 To measure income and assets for meeting external regulatory and legal reporting obligations-Cost allocation is usually important for publicly listed companies to meet requirements for financial reporting (Schippers, 2014).

Narmpoch (2010) stated that there are many methods of costs allocation; 1) direct allocation, 2) step allocation, and 3) reciprocal allocation.

- Direct allocation method: This is a technique for charging the cost of service departments to other parts of a business. This concept is used to fully load

operating departments with those overhead costs for which they are responsible (Bragg, 2020).

By this method, the cost-of-service department will be charged to a production department as per the following flowcharts:

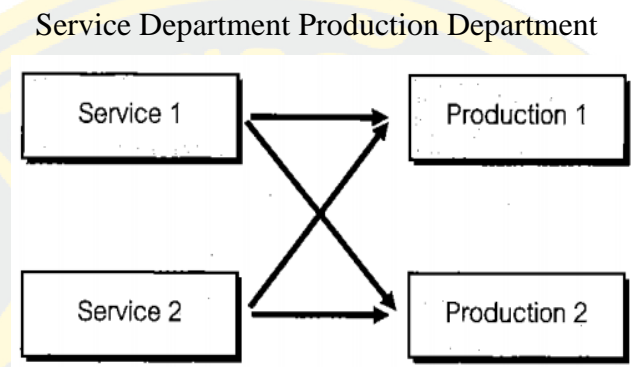


Figure 5 Direct allocation (Narmpoch, 2010)

- Step allocation method: Bragg (2018) stated that it is an approach used for allocating the cost of the services provided by one service department to another service department.

Summary of the 3 essential steps starts from:

(i) This service department that provides to the largest number of other  
 (ii) Service departments or bears the largest percentage of its costs consumed by other service departments allocates its costs to them first. It also allocates its other costs to the operating departments, 1) adopt similar step 2) to the service department that provides service to the next-largest number of other service departments, and

(iii) Continue the process until the service department that provides services to the smallest number of other service department have allocated its costs.

The process can be illustrated in the Figure below:

Service Department    Production Department

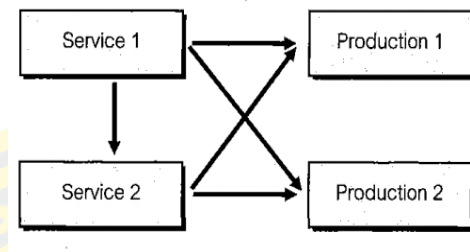


Figure 6 Step allocation (Narmpoch, 2010)

(iv) Reciprocal allocation method: This method is the most accurate but the method itself is most complicated. In the reciprocal method, the relationship between the service departments is recognized. This means service department costs are allocated to and from the other service departments (Luman Learning, n.d.).

Narmpoch (2010) stated that by this method, the service department costs are first allocated to and from other service departments by using the following formula:

$$[A] [S] = [B]$$

$$[S] = [A]^{-1} [B]$$

In the above formula, A represents proportion of service. B represents activity cost before allocation, and S represents the activity that provides service.

The interrelationship between service departments and further allocations to other departments is illustrated in the Figure below:

Service Department    Production Department

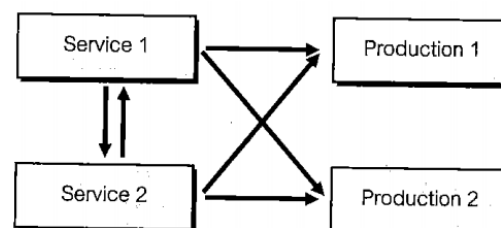


Figure 7 Reciprocal allocation (Narmpoch, 2010)

## 2.5 Cost estimation

Klaharn (2007) stated that since each type of cost has its own specific character, the knowledge of the matter of costs as to how those costs will affect the operation of activity is a primary principle of the study of the cost estimation and cost control.

Klaharn (2007) further stated that in preparation of an estimated cost, change in the factors to be applied to the decision-making should be taken into consideration. The study of cost behavior appeared in the past will help us to forecast all costs to be incurred. In principle, the problem of cost behavior to be estimated is the estimation of average rate of variable cost. There are 4 methods of cost segregation to be used for the purpose of estimating the rate of variable cost in the past; once the variable cost is estimated, we can further find out the fixed cost. Such 3 methods are as follows:

2.5.1 High-low point method: This is a basic method popularly used for splitting fixed cost and variable cost according to the following formula:

$$\text{Variable cost per unit} = \frac{\text{Highest activity cost} - \text{lowest activity cost}}{\text{Highest activity units} - \text{lowest activity units}}$$

If the highest and lowest working hours are 7,000 (high) and 2,000 (low) hours respectively, while the highest and lowest repair costs are THB 150,000 and THB 50,000, the differences are 5,000 hours (7,000-2,000) for working hours and THB 100,000 (150,000-50,000) for total cost. The variable cost per hour is:  
 $\text{THB } 100,000 \div 5,000 \text{ hours} = \text{THB } 20 \text{ per hour.}$

If we work for 7,000 hours, the variable cost will be THB 140,000 (THB 20 per hour X 7,000 hours). Then we can further calculate the fixed cost by using the formula:

$$\text{Fixed cost} = \text{Total cost} - \text{Variable cost}$$

In this scenario case, the fixed cost is THB 10,000 (THB 150,000-140,000).

1. Line of regression: Klaharn (2007) stated that, in practice, it was found that this segregation method is complicated.

2. Multiple regression: This method will bring an accurate result but it is not so easy to use this method because computerized calculation is required (Klaharn, 2007).

3. Scatter graph method: This method is also called “Visual curve fitting method” (Klaharn, 2007). It is a visual technique for separating the fixed and variable elements of a semi-variable expense (also called a mixed expense) in order to estimate and budget for future costs. A scatter graph has a horizontal x-axis that represents production activity, a vertical y-axis that represents cost, data that are plotted as points on the graph, and a regression line that runs through the dots to represent the relationship between the variables (Kenton, 2018).

For example; assuming that the working hours of a machine in 8 months vary from 3,200 hrs. (lowest) to 6,000 hrs. (highest), and fuel costs from THB 8,800 (lowest) to THB 18,000 (highest), a scatter graph with horizontal axis being for the working hours of machine and a vertical axis for fuel costs can be drawn up as a Figure:

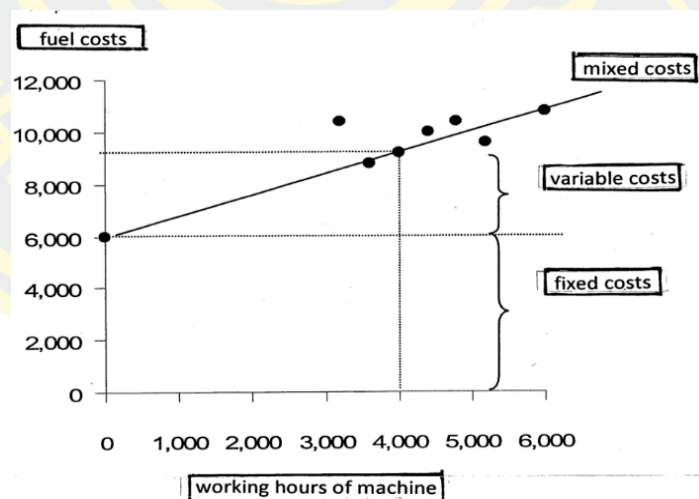


Figure 8 Scatter graph method (Klaharn, 2007)

From the above Figure, if the fuel cost is estimated by observation, the fixed cost will be found to be THB 6,000, then we can calculate variable cost by way of drawing a vertical line from the activity level of 4,000 of the working hours of

the machine up to the point where it meets the total cost line. That point will correspond to THB 9,200 level at the left-hand vertical axis which is the total cost (Klaharn, 2007).

As a result of the above findings, the total variable cost is THB 3,200 [9,200 (as total costs)-6,000 (as fixed cost)].

Rate of variable cost per unit can be concluded by adopting the following formula:

$$\text{Rate of variable cost per unit} = \frac{\text{Total variable cost}}{\text{The level of activity incurring cost}}$$

Therefore, the rate of variable cost per unit is THB 0.8 (or 80 Satang) per working hour of machine ( $3,200 \div 4,000 = 0.8$ ).

## 2.6 Terminologies

It can be seen from the above information that there are many important technical terms which are closely relevant to the term “Cost” and thus, to understand such technical terms exhaustively as well as the key term, ABC to be further discussed, we need to know the meanings of some important terms:

### **Activity**

This means an event, task or unit of work with specified purpose (Horngren, Foster, & Datar, 1997 cited in Moore, 1998). It means the event or any unit that incurs cost to the operation (Pajongwong, 2018). It can also incur cost to production and service (Mee-amphol, 2017). In conclusion, based on the above, activity means any event or task or unit of work that incurs cost to the production and service.

Activity can be either value-added activities or non-value-added activities.

### **Fixed cost**

This is a cost which incurs invariably and does not vary with the activity or volume of production, e.g. depreciation of machines and factory (Rodwanna, 2017). A fixed cost is the cost incurred by businesses and corporations. Unlike the variable cost, a company's fixed cost does not vary with the volume of

production. It remains the same even if no goods or services are produced, and therefore, cannot be avoided. (Nickolas, 2019). An example of fixed cost is a fixed amount of annual rental to be paid by a factory regardless of the number of months the factory will operate in a period of one year.

#### **Variable cost**

This cost will vary with the level of activity or production unit (Rodwanna, 2017). A variable cost is a company's cost that is associated with the number of goods or services it produces. A company's variable cost increases and decreases with its production volume. When production volume goes up, the variable costs will increase. On the other hand, if the volume goes down, so too will the variable costs (Nickolas, 2019).

#### **Mixed cost**

The nature of mixed cost is a combination of fixed cost and variable cost during a certain period (Pajongwong, 2018). It is also called “Semivariable cost”; for example, if the fixed minimum amount of taxi fare is THB 35 for the first 10 kilometers and thereafter, the fare will escalate at a certain rate per kilometers, the minimum fare of THB 35 is the fixed cost while the escalated fare is the variable cost (Rattanaipob, 2018).

#### **Direct cost**

A direct cost is a price that can be directly tied to the production of specific goods or services. A direct cost can be traced to the cost object, which can be a service, product, or department. Direct and indirect costs are the 2 major types of expenses or costs that companies can incur. Direct costs are often variable costs, meaning they fluctuate with production levels such as inventory. However, some costs, such as indirect costs are more difficult to assign to a specific product. Examples of indirect costs include depreciation and administrative expenses (Kenton, 2020).

The direct cost is the incurred costs that can be clearly specified as the costs of goods or products or any department, e.g. direct materials and direct labour (Mee-amphol, 2017).

### **Indirect cost**

The costs incurred that cannot be clearly specified as being the costs of goods or products or any department. There may be common costs (Mee-amphol, 2017). Therefore, it is the cost immaterial to the production of goods (Rodwanna, 2017). It is difficult and unclear to identify as to the cost of which goods (Rattanaatraipob, 2018).

### **Sunk cost**

This is the cost already incurred and unavoidable or unchangeable, either with a present change or future change in decision making (Rodwanna, 2017). Money that has already been spent and which cannot be recovered (Tuovila, 2019).

### **Cost behavior**

Cost behavior is the manner in which expenses are impacted by changes in business activity. The general types of cost behavior fall into 3 categories; 1) variable costs, 2) fixed costs, and 3) mixed costs (Bragg, 2018). It is the cost which is expected to incur in each activity level. When the activity increases or decreases, the cost may be higher or lower or may remain unchanged (Bussasontorn et al. 2018).

### **Cost driver**

This means the factor or activity which directly relates to the use of resources in each level or activity cost pools (Mee-amphol, 2017). A cost driver is the direct cause of a cost and its effect is on the total cost incurred. For example, if you are to determine the amount of electricity consumed in a particular period, the number of units consumed determines the total bill for electricity. In such a scenario, the number of units of electricity consumed is a cost driver (CFI Education Inc., n.d.). Other examples of cost driver in each activity are 1) installation of machine, the cost driver is the number of installations, 2) movement of raw materials, the cost driver is the weight of raw material, 3) quality control, the cost driver is the number of inspections, and 4) other expenses, the cost driver is working hours of machine. (Ronald, 2001 cited in Songtras, 2009). Cost driver is also called “Activity base” (Bussasontorn, et al., 2018).

### **Cost object**

A cost object is any item for which costs are being separately measured. It is a key concept used in managing the costs of a business (Bragg, 2019). Cost object

was also referred to as “Cost object costs”; the costs of everything for which a separate measurement of costs is desired (Horngren, Foster, & Datar, 1997 cited in Moore, 1998).

### **Cost pool**

A cost pool is a grouping of individual costs, typically by department or service center. Cost allocations are then made from the cost pool. For example, the cost of the maintenance department is accumulated in a cost pool and then allocated to those departments using its services. (Bragg, 2019). In ABC system, cost pools are defined as grouping cost by activities considering the total amount consumed by these activities (Arzova, 2002 cited in Tamur, 2012).

### **Activity Based Costing (ABC)**

The abbreviation of ABC may cause confusion as to its meaning because if it stands alone, it can be a logistical tool for warehousing by way of dividing the goods or products or inventory into different groups as per the specified criterion (Leela, 2000). That is irrelevant to this research. Therefore, in this report “ABC” stands for activity-based costing which may also be written in a different style as activity-based costing.

### **ABC and Traditional Accounting System**

In the past, companies (especially, manufacturing companies) used a simple costing system which is now called “The traditional costing system”. Since nowadays product diversity has increased and so has direct cost, the use of traditional costing system may lead to the inaccuracy in product cost (Horngren, 2009 cited in Effendi, n.d.).

In the past, the traditional accounting system was mainly used but now it is used for financial reporting procedures. In the traditional costing system, direct costs, e.g. direct labour and materials are directly attributed to the cost objects. However, indirect costs such as marketing, depreciation, training and electricity are typically allocated to each cost object using a single or a few volume-based cost driver (e.g. direct labor, machine hours or units of output. (Kaplan and Cooper, 1998 cited in Siguenza-Guzman et al, 2013). The traditional costing system is also referred to as the conventional costing system (Bras & Emblemsvåg, 1996).

Many companies used this traditional costing system because historically they produced limited products and indirect costs were relatively small when compared to total costs. Because of this condition, the traditional costing system was deemed a simple, easy and inexpensive way to allocate costs. However, since product diversity and indirect costs have now increased, the use of traditional costing system could lead to inaccurate product costs (Horngren, 2009 cited in Effendi, n.d.).

Until in the late 1980, the concept of ABC was first introduced by Robert Kaplan and William Burns as an alternative approach to the traditional system or arbitrary allocation of overheads to products, services and customs (Edwards, 2008).

The differences between ABC and the conventional cost system in terms of cost deduction can be exemplified by adopting the comparison Table below:

Table 2 How conventional and ABC systems achieve different cost reductions  
(Turney, 1991 cited in Bras & Emblemvåg, 1996)

<b>Examples of cost reductions</b>	<b>Conventional cost system</b>	<b>ABC system</b>
Reduce setup time	Ignore or reduce direct labor with an equivalent amount	Reduce setup time to achieve low cost diversity
Eliminate material handling activities	Ignore or reduce direct labor with an equivalent amount	Eliminate activities to reduce the cost of handling materials
Choose an insertion process	Pick alternative with lowest unit level activities	Pick lowest cost alternative
Use common components	Using common components yields no cost savings, using non common components creates no cost penalty	Use common components wherever possible

ABC has been referred to and used in various study papers as a system, method, methodology, tool, approach and accounting process. Also, ABC has been studied from some different perspectives and thus, a number of meanings or definitions have been given by many scholars, practitioners and researchers.

1. As a System: ABC is well-structured information system which forms, operates and maintains a database that covers the company's operations, activities and products (Turney, 1991 cited in Kapie, n.d.). Activity based costing system is known

as the system which works on assembling the manufacturing overhead costs for each activity of the established cost pool and then distributed by Cost Drivers on products (Horgern (2005) cited in Hanini, 2018). ABC is a system that allows organisations to track the cost associated with activities performed to produce or to deliver a service (Ray (2012) cited in Madwe, n.d).

2. As a Method: ABC is a method of measuring cost and performance of activities and cost objects (Innes, Mitchell, & Sinclair, 2000; Turney, 1996 cited in Elhamma, 2015).

ABC is a method for calculating the cost that creates a group fee for each event or transaction (activity) in an organization that serves as a booster charge (Garrison, 1991 cited in Soekardan, 2016). ABC is a method of costing activities that are necessary for the production of products or services (Ray, 2012 cited in Madwe, n.d). CIMA (2001), however, argued that ABC is not a method of costing, but a technique for managing the organisation better.

3. As a Methodology: The Consortium of Advanced Manufacturing International (CAM-I) defined ABC as a methodology that measures the costs and performance of activities, resources and cost objects (Dierks & Cokins, 2000). Dierks and Cokins, Ed., (2000) defined ABC as “A methodology that measures the cost and performance of cost objects, activities and resources. Cost objects consume activities and activities consume resources. Resource costs are assigned to activities based on their use of those resources, and activity costs are reassigned to cost objects (outputs) based on the cost objects’ proportional use of those activities. Activity-based costing incorporates a causal relationship between cost objects and activities and between activities and resources.”

4. As a Tool: Indeed activity-based costing is much as a tool of corporate strategy as it is a formal accounting system (Cooper & Kaplan, 1988). ABC as a tool was also supported by Puttipatkosit (2006) who stated that ABC is a managerial tool in the manner of valued-based management which connects organization management to daily work performance by taking into consideration the cross function of each unit of the firm in integrated view. Also, Berts and Kock (1995) stated that ABC is further a helpful tool in case of implementing quality thinking in service firms as it

encourages management to analyze activities and determine their value to the customer.

5. As an Approach: Activity-based costing is an advanced costing approach that seeks to remedy the limitations of the traditional costing method (Kaplan & Cooper, 1998 cited in Yongpae, Sungwoo, & Youself, 2019).

ABC is defined by The Chartered Institute of Management Accountants (CIMA, 2005) as “An approach to the costing and monitoring of activities which involves tracing resource consumption and costing final outputs. Resources are assigned to activities, and activities to cost objects based on consumption estimates. The latter utilize cost drivers to attach activity costs to outputs.” (Edward, 2008) .

As an Accounting Process: ABC is a management accounting process that allocates resource costs to products based on activities, which are the factors causing work and incurring cost, used by products or services (Krumwiede & Roth, 1997 cited in Elhamma, 2015).

ABC can be applied in service industries and businesses, e.g. financing services, healthcare and insurance (Ruhl & Hartman, 1998 revised by Hagood, 2001). The application of ABC to service businesses was extended to airlines, hospitals and telecommunications (Pajongwong, 2018).

Despite a variety of attempts to conclude the meaning of ABC from different perspectives, such as a system, method, tool, approach, process, it is fair to say that ABC was often referred to by the majority of the practitioners, scholars and researchers as a system.

In conclusion, on the basis that ABC can apply to both production business and service businesses, a comprehensive definition covering both businesses should, in my view, be that ABC is a system of cost allocation by way of, as the first step, the production costs or service costs (as the case may be) are assigned to activity cost pools and thereafter, each activity cost pool will further be re-assigned to cost objects based on their proportional use of activities.

### **Benefits, Model and Process of ABC**

Edwards (2008) It has been established in various case studies in many organizations practically applying ABC that ABC provides a useful and interesting inside into how ABC is used; for example, the study which was carried out in July 2005 to determine the state of ABC within over 500 organizations across various industries of different sizes and locations. The reported benefits are:

1. ABC provides a more accurate method for the costing of products and services. It allows for a better and more comprehensive understanding of overheads and what causes them to occur.
2. It makes costly and non-value adding activities more visible, so allowing managers to focus on these areas to reduce or eliminate them.
3. It supports other management techniques such as continuous improvement, scorecards and performance management.
4. Another benefit of ABC is stated by William Rotch that it improves product costs for decision-making and the performance measurement process. It does not change the cost accumulation process but makes that process and overhead cost assignment more realistic and relevant to how and why costs are incurred. The process allows management to focus on value-added activities (VAA) and non-value-added activities (NVAA) so that non-value-added activities can be reduced or eliminated (Rotch, 1990 cited in Tupmongkol (2008)).

Three major benefits of the ABC system were pointed out by Robin Copper; 1) more accurate product costs, 2) an improved understanding of the economics of production, and 3) a picture of the economics of activities performed by a company (Cooper, 1990 cited in Tupmongkol (2008)).

Tupmongkol (2008) also stated that the ABC system is much more than a product costing accounting system as it can be used for many things, e.g. to determine a competitive price of a product, to develop budgeting, future cost estimating, and etc. The ABC system also enables management to understand the factors that affected costs and how to manage them. In conclusion, the benefit of ABC is to approve product costs and the performance measurement process beneficial to both manufacturing and service organizations.

Lyly-Yrjanainen, Kulmala and Paranko (2000) proposed a basic model of activity-based costing which consist of 3 main stages starting from the assignment of cost factors to resources, resources to activities and activities to cost objects.

This basic model as proposed by Lyly-Yrjanainen can be illustrated in Figure below:

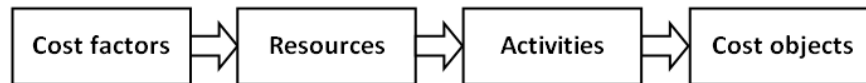


Figure 9 Basics of activity-based view (Lyly-Yrjanainen et al., 2000 cited in Tamur, 2012)

Fichman and Kemerer (2002) designed a diagram outlining the ABC process by commencing with the resources which represent the people, materials, consumables, machines, money, facilities, etc. needed. The flow further moves to the resource cost assignment representing the resource cost drivers which assist in determining how much resources and activities required. The flow then moves further to activities which are defined as the process and organization will embark on e.g. selling, purchasing, assembling, etc. Activity cost assignment of each activity which represents the activity drivers will determine how much an object utilizes an activity. In the last step, cost objective represents products, services, customers, markets, channels and etc. The diagram can be illustrated in the Figure below:

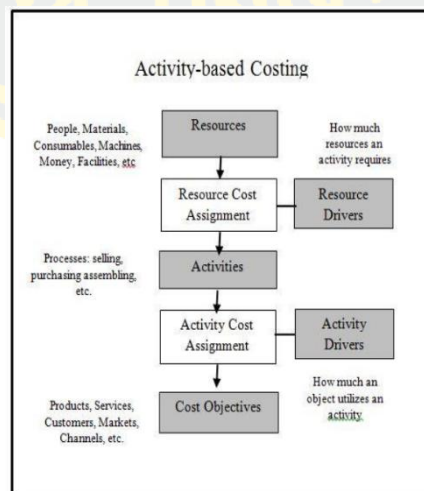


Figure 10 Activity-based costing (Fichman and Kemerer, 2002 cited in Bvumbi, 2017)

However, the above basic model and process may need to be explained further in order to understand how to implement ABC.

Edward (2008) proposed 4 steps to implement ABC:

#### 1. Identify activities

The organization needs to undertake an in-depth analysis of the operating processes of each responsibility center. Each process might consist of one or more activities required for producing an output.

#### 2. Assign resource costs to activities

This involves tracing costs to cost objects to determine why the cost occurred. Costs can be categorized in 3 ways.

2.1 Direct costs are those can be traced directly to one output; for example, the wood and paint that it takes to make a chair.

2.2 Indirect costs are those cannot be allocated to an individual output; that is, they benefit 2 or more outputs, but not all outputs; for example, maintenance costs or storage costs.

2.3 General/ administration costs are those cannot be associated with any product or service. These costs are likely to remain unchanged, whatever output is produced; for example, salaries of administration staff, security costs and depreciation.

##### 2.3.1 Identify outputs

This step will identify all of the output for which an activity segment performs activities and consumes resources. Outputs might be products, services or customers.

##### 2.3.2 Assign activity costs to outputs

This is done by using activity drivers. Activity drivers assign activity costs to outputs (cost object) based on the consumption or demand for activities.

Similarly, 4 steps in implementation of ABC and the process of each stage can be illustrated by the Table 3 below.

Table 3 Steps in the implementation of ABC

Stage	Process of each stage
First	Identification and classification of experiences
Second	Calculating the costs associated with each activity
Third	Determining the cost driver for activities
Fourth	Cost allocation of experiences with cost driver to the goods

**Source:** Anderson and Young (1999); Reyhanoglu (2004); Rasiyah (2011); Garrison et al, (2014), cited in Bazrafshan and Karamshahi (2017)

### Activity mapping

From the above resources, ABC was found to be widely recognized as a system or tool to allocate costs accurately and also popularly used in both production and service firms.

However, a key question of this research as part of the dissertation is how to apply those logistical and accounting tools properly so as to establish that, when considering Thailand and Lao PDR, litigation costs can be reduced if Thailand enacts a law and also enters into a bilateral agreement with Lao PDR on the recognition and enforcement of foreign judgments. This is not only a task but also a challenge.

In addition to the aforesaid tools including ABC, this research will study the concept of “Activity mapping” which is actually part of ABC process and should be taken into consideration as 1) it may enable us to see all the relevant works and activities clearer and, 2) ease the costs classification and 3) finally, lead to a comparison table of cost objectives.

In their article on Practitioner’s Guide: Activity Mapping, Activity mapping is defined by Müller and Becker (2006) as a quick and feasible way to identify gaps in the coverage of services by inventorying all stakeholders’ activities and locating them geographically.

The mapping exercise gives all organizations a clear picture of where work is being done, and where demands for services or support are still remaining.

They also proposed 10 steps for the general procedure for activity mapping.

These 10 steps are:

Step 1, Definition of the Research Question,

Step 2, Identification of existing information and a grid of subjects to explore,

Step 3, Define a grid of activities that are commonly applies to tackle the identified core issues,

Step 4, Identify the planning level, on which activities are carried out,

Step 5, Identify the target organizations to be invited for an activity mapping exercise/ workshop,

Step 6, Develop and pretest a questionnaire,

Step 7, Activity Mapping workshop: Data collection,

Step 8, Data processing and-analysis,

Step 9, Visualization and redistribution of results, and

Step 10, Discussion of Results/ Policy Making.

Although some of those steps as suggested by Müller and Becker (2006) may not be perfectly applied to this thesis, some are still helpful to give an idea and guidelines for the way to compare the different litigation costs to be incurred in 2 scenario cases; one where a foreign judgment is recognized and enforceable and the other the opposing situation. By adopting the Step 1, two questions will have to be considered, i.e. “What do I want to do?” and “What I need to know to quickly achieve my goal with great impact?”. To ascertain such different litigation costs, a clear picture of all activities involving the litigations in the 2 different scenario cases is to be prepared in the manner of activity mapping.

If a company can clearly identify its production activities and map them, it can understand the benefits and handicaps the activity creates to the firm.

Also, activity mapping has plenty of other benefits other than being used in cost assignment only (Helminen, 2003 cited in Tamur, 2012).

To map the activities, activity analysis is required and is defined in 7 steps, i.e. 1) Define the scope of the activity analysis, 2) Define the departments of activity analysis, 3) Define the activities, 4) Rationalize the activities, 5) Classify the activities as major or minor ones, 6) Make a map of activities, and 7) Document the activities (Helminen, 2003 cited in Tamur, 2012)

The Figure below is an example of current process activity mapping:

Table 4 Process activity mapping-Reservation Value Stream  
(Vlachos & Bogdanovic, 2012)

no	Step	Flow	Machine/ Facility	Distance	Time	Personnel	Group	Comments
1	Reservation inquiry	O	Phone Fax Computer In person Third party	Irrelevant	2 min	1	1	
2	Reservation confirmation	O	Fax Computer Voucher	Irrelevant	0,5 min	1	1	
3	Departure to the airport	T/D/O	Car/Van	Depends on location		1	2	Time varies from distance and traffic
4	Waiting for a guest(s)	I	None	Irrelevant		1	2	Time varies from previous organization and accuracy of arrival of a transportation mean
5	Arrival with the guest	T/D/O	Car/Van	Depends on location		1	2	Time varies from distance and traffic
6	Check in	O	Computer	Irrelevant	1 min	1 (+1 for higher ranked hotels)	1	Function of a "bell-boy" is frequent in hotels of upper categorization; Efficiency of operations highly important (AAQ 4)
7	Accommodation	O/I	Room and hotel premises	Relevant		1+1	3	Importance of accessibility, tidiness, quietness
8	Check out	O	Computer	Irrelevant	2-5 min	1	1	Efficiency of operations moderately important (AAQ 3,8)
9	Departure with the guest	T/D/O	Car/Van	Depends on location		1	2	Time varies from distance and traffic
10	Arrival of the driver	T/D/O	Car/Van	Depends on location		1	2	Time varies from distance and traffic
<b>Total</b>					≥5,5 – ≥8,5	10-12	<b>Total</b>	
<b>Operations</b>					≥5,5 – ≥8,5	5-7	<b>Operations</b>	
<b>Value adding</b>					100%	50- 58,33%	<b>Value adding</b>	

O – Operation, T – Transport, I – Inspection, D – Delay

## Data collection and interviews

This part of the research will address 2 topics i.e. 1) Data collection, and 2) Interviews.

### Data collection

In principle, in collecting data, the data may be derived from either primary sources or secondary sources, or both.

It was found from various researches, for example, in the research on the Impact of Adopting Activity Based Costing (ABC) on Decreasing Cost and

Maximizing Profitability in Industrial Companies Listed in the Amman Stock Exchange, that the primary sources were derived from the questionnaires, while the secondary sources consisted of books and periodicals related to the subject matter of the study (Hanini, 2018).

Literature review and questionnaires were also used by Fawzi Adalla Abusalama in his Ph.D. thesis research on Barrier to Adopting Activity-Based Costing Systems (ABC) an Empirical Investigation Using Cluster Analysis (Abusalama, 2008).

Similarly, in the thesis research on the Application of Activity Based Costing to Compare cost and Profit between the Farmers Using Chemicals and Organic Agriculture in Ayutthaya Province, the primary data was gathered from direct interviews by use of questionnaires to be answered by 6 samplings in the same province, and the secondary data was gathered from documentary review of the relevant researches and statistics kept by both private and government sectors. (Judjaeng, 2013).

Also, in a Master of Accountancy-Research Thesis on Implementation of Activity-Based Costing in China: a Case Study of a Multinational Company, School of Accounting and Finance, University of Wollongong, the sources of data came from a review of important documents (documentary review) and interviews which were taped and transcribed (Xu, 2012).

I have the intention to apply both aforesaid methods to my data collection. However, there are other relevant issues which need to be further discussed herein, i.e. 1) questionnaires and interviews, and 2) selection of the sample group.

#### **Questionnaires and interviews:**

Both questionnaire and interview are research tools used for data collection. They seem similar, but in fact, there are some substantial differences in detail.

A questionnaire is a search instrument consisting of a series of questions for the purpose of gathering information from respondents. Questionnaires can be thought of as a kind of written interview. They can be carried out face to face, by telephone, computer or post (McLeod, 2018).

Chantawanich (2018) stated that an interview is a research method widely used in social sciences. It is a form of interaction between the questioners and

respondents under the rules with the purpose of data collection. It can be an individual interview or group interview. There are many types of interviews and some of them are, for example:

1. Structured interview or formal interview: This is an easy method and similar to questionnaire because all fixed questions have been prepared in advance (Chaiwan, 1982 cited in Chantawanich, 2018).

2. Non-structured interview: It is used in qualitative research and also in anthropology. Usually, the researcher will conduct the interview himself by using general questions that were prepared in advance and raise additional questions during the course of interview. Non structured interviews comprise 4 types.i.e.

1) Informal interview, 2) Focus interview (or in-depth interview), 3) probe and (iv) key information interview.

3. A key information interview is one of the 4 types of non-structured interview. Chantawanich (2018) stated that it is an interview where by some respondents are specifically selected as they have good in-depth knowledge or broad information which is special and meets the researcher's requirements.

The respondents in this context are so called "Key information providers". Therefore, the researcher must identify who (the key information provider) should be interviewed. Then an appropriate method of interview will be selected.

### **Selection of sample group**

There are 2 major methods for sampling selection; namely

1) non-probability sampling and, 2) probability sampling.

The non-probability sampling method is a technique which uses non-randomized methods to draw the sample. It mostly involves the judgment of the researcher. Participants are specifically selected instead of being selected randomly. This method is useful and convenient to sample selection and appropriate in certain cases which require only this method. There are many methods of non-probability sampling, i.e. convenience sampling, purposive sampling, quota sampling and snowball sampling (Showkat, 2017).

Purposive sampling is also known as judgmental, selective or subjective sampling. It is a form of non-probability sampling by which researchers rely on their

own judgment when choosing members of the population to participate in their study (Foley, 2018).

### **Data analysis**

Bhatia (2018) stated that a weak analysis process may result in inaccurate result and thus, data analysis is perhaps the most important competent of research.

Bhat (n.d.) stated that, according to LeCompte and Schensul, research data analysis is a process used by researchers for reducing data to a story and interpreting it to derive insights. The data analysis process helps in reducing a large chunk of data into smaller fragments, which make sense.

Nowadays, we can use computer programs to do data analysis. However, Chantawanich (2016) stated that, in fact, the computer merely helps the researchers reduce the research time and size of data. There are a lot of computer programs which can support the researchers, e.g. EUREKA, EURUP, Text Editor and more recently, Ethnograph including Text Search, Packages and RDBMS.

Bhatia (2018) suggested that before the step of data analysis is taken, 3 steps must be first carried out, i.e. step 1: data validation, step 2: data editing and step 3: data coding. Qualitative data analysis methods and Quantitative data analysis methods have different components.

#### **Qualitative data analysis methods**

The most commonly used methods and their usage are as follows:

1. Content analysis: This is one of the most common methods to analyze qualitative data. It is used to analyze documented information.
2. Narrative analysis: This is used to analyze content from various sources, e.g. interviews of respondents, observations from the field or survey.
3. Discourse analysis: This is used to analyze interactions and is focused on social context analysis.
4. Grounded theory: This is used to explain why a certain phenomenon transpired.

Chantawanich (2016) stated that the important methods to be used as a foundation of data analysis are 1) typological analysis, 2) comparison and 3) analytic induction. Comparison method is the way to seek the likeness and differences in

qualities or attributes of at least 2 different sets of data systematically in order to create a conclusion mentioning the common and different qualities of the 2 different data sets.

Some Thai scholars are of the view that one of the popular methods for qualitative data analysis is triangulation which can be used for verifying the reliability of the data. However, the researcher should not rely on the accuracy of the data collected once. (Kanchanavasi & Kanchanavasi, 2018).

Data triangulation was defined by Chantawanich (2018) as a method to prove whether the data obtained by a researcher is accurate or not. The proof method is to verify the data sources to be taken into the verification, for example, time, place and persons. In case of data from persons, the verification shall intend to see whether the data would be the same if the data is given by a different person.

### **Quantitative data analysis methods**

The 2 most commonly used methods are 1) Descriptive statistics (to describe data), and 2) Inferential statistics (to help in comparing data).

Bhat (n.d.) elaborated on both statistic methods as follows:

1. Descriptive statistics: This is used for describing the basic features of versatile types of data in research. It presents the data in such a meaningful way that the pattern in the data starts making sense. Major descriptive methods and their usage are as follows:

1.1 Measure of Frequency (count, percent, and frequency): This method is used by researchers when they want to showcase how often a response is given.

1.2 Measure of Central Tendency (mean, median, and mode): This is used when the researchers want to showcase the most commonly or averagely indicated response.

1.3 Measure of Dispersion or Variation (range, variance, standard deviation): This is used to identify the spread of scores by stating intervals.

1.4 Measure of Position (percentile ranks, quartile ranks): It is often used by the researchers when they want to compare scores with the average count.

2. Inferential statistics: This method is used to make predictions about a larger population after research and data analysis of the collected sample of the representing population. Two significant areas of inferential statistics are:

2.1 Estimating parameters: This takes statistics from the sample research data and uses it to demonstrate something about the population parameter.

2.2 Hypothesis test: This is about the sampling research data to answer the survey research.

In summary, descriptive statistics will provide absolute numbers but do not explain the rationale behind the numbers while inferential statistics are used to make predictions about a larger population after research and data analysis of the collected sample of the representing population.

### **Graphic presentation**

Once the relevant data has been gathered completely, presentation of such data to other persons for ease of understanding can be made through visual forms, e.g. tables, charts and graphs.

Since there are many ways to present the data depending on the visual form applied to the display, there are many terms concerned, such as graphical presentation of data (or graphical data presentation), graphic presentation, data presentation, statistical data presentation. These terms seem similar but have some differences in details.

#### **Graphical presentation of data**

Leon (2016) stated that the aim of presenting scientific data graphically is to illustrate the power of visual display to communicate information efficiently which avoids deception or confusion.

#### **Data presentation**

Steelberg (2017) analyses the data presentation by way of showcasing the data with charts and graphs and also suggests general thumb rules as follows:

1. Clarity and simplicity is the key;
2. Making it easy to read and interpret;
3. Respect visual and mathematical principles;
4. Play around with your data collected; and
5. Cite the sources

Some useful charts and graphs are recommended such as:

1. Pie Charts: A pie chart showcases the parts of a whole or a percentage of a total. The normal form of a pie chart is a circle and thus, it is also called a circular statistic graphic

2. Waffle Charts: A waffle chart is also known as square pie chart. It can be used to illustrate the parts of an entire or percentages of a total. The waffle charts consist a large square divided into smaller squares in which small squares will be proportionally colored to the part or percentage that is being represented.

3. Bar Charts: A bar chart displays values assigned to individual categories. Each bar designates a whole and exact value for variables in question. The bar chart is also known a bar graph.

4. Maps: This type of data presentation can be used to display a continuous spectrum of values of certain things and it can also be used to display data point on the map itself.

5. Line Charts: It is also known as line graph displaying data points on a graph, plotted according to a quantitative variable and a continuous variable.

6. Scatterplots: Its synonym with scatter graph, and display the values of a dataset with 2 quantitative, or numeric, variables. The individual data point will be plotted on a single graph.

7. Bubble Charts: It is similar to scatterplots but a bubble chart introduces a third variable while scatterplots display the 2 variables only. The size of the data points represented by bubbles will also convey information about data elements.

8. Histograms: Its form may look like a bar chart but it displays numeric data rather than categorical data, and there is a mathematical logic behind the sizes of the bars.

9. Box Plots: This is also known as a box-and-whiskers or as a whisker plot. It shows the distribution of a quantitative dataset.

Data presentation can be used in many types of research including medical research such as in the article on Epidemiology and Biostatistics Applied to Dermatology; Presenting Data in Tables and Charts was used to present epidemiological data (Duquia et al, 2014).

In and Lee (2017) were of the view that data can be presented in one of the 3 ways, namely as text, in tabular form or in graphical form. They also suggested that a method of presentation be chosen after carefully weighing the advantages and disadvantages of different methods of presentation.

Since this research will use pie charts and bar charts (also known as bar graphs) as the visualized forms of data presentation, more details of these 2 forms will be given:

### **Pie charts**

A pie chart can be called a pie diagram or pie graph.

Although a pie chart is familiar to everyone, there are 2 problems which should not be overlooked: first, it is less easy to judge the relative magnitude of values in a pie diagram than a histogram, and secondly, we cannot put error bars on a pie diagram (Leon, 2016).

A pie chart visually presents the distribution of a category and it is used to present nominal data which can be classified in a different category while a bar graph or histogram is used to indicate and compare values in a discrete category or group and the frequency or other measurement parameters (In & Lee, 2017).

The pie chart is used to visualize the way in which an entity is divided into smaller parts. In general, it is recommended to avoid use of this kind of graph or chart to present a large number of variables (GPEM, 2017).

Steelberg (2017) states that a pie chart showcases the parts of a whole or percentages of a total and we can prepare 2 charts depicting the same thing in different moment in time so that we can compare them to one another.

### **Bar charts**

A bar chart or bar graph displays values assigned to individual categories and each bar shall represent an entire, exact value for a variable in question while a histogram shows the distribution of a quantitative dataset that may look like a bar chart, but it displays numeric data rather than categorical data and thus, histogram groups value into consecutive numeric ranges or intervals known as bin (Steelberg, 2017).

The above comment on the differences between a bar chart and histogram is endorsed by Leon (2016); although bar charts may look like a histogram, there is

a difference in that bar chart is distinct from a histogram, in which frequencies are shown for classes on a continuous scale, rather than for categories.

A bar chart can be called a bar graph.

A bar graph presents the relationship between 2 or more non-continuous variables, whereby the strength of the relationship is proportional to the length of the bars. It is useful for comparing multiples variables (GPEM, 2017).

Now, the visual forms of pie charts and bar charts will be illustrated for ease of understanding.

### Pie chart

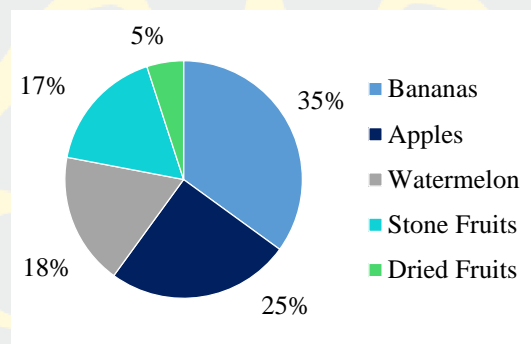


Figure 11 Example of pie chart: Sale at the fruit market, Brisbane, 2009 (GPEM, 2017)

### Bar chart

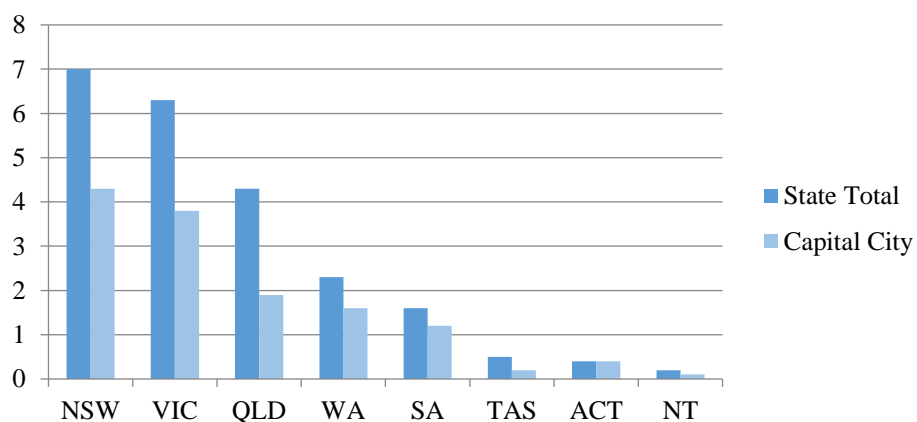


Figure 12 Example of bar chart: 2008 population in Australian States and State Capitals (GPEM, 2017)

Leon (2016) also states that the data which is presented in the form of pie diagram can always be presented by chart. This statement can be illustrated by the following example of data of the market shares of each of fruits available in one market as shown in the pie chart below:

**Pie chart**

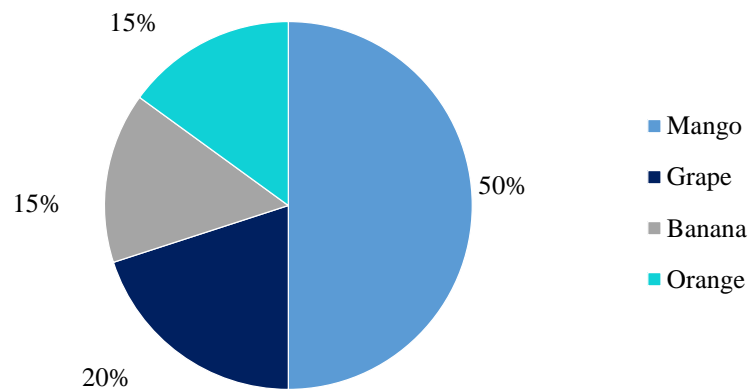


Figure 13 Modification of figure 11 (sale at the fruit market, Brisbane, 2009)

By adopting the same data of the market share as illustrated in the Figure 12 above, same data can be displayed by the following horizontal bar chart with the same outcome:

**Bar chart**

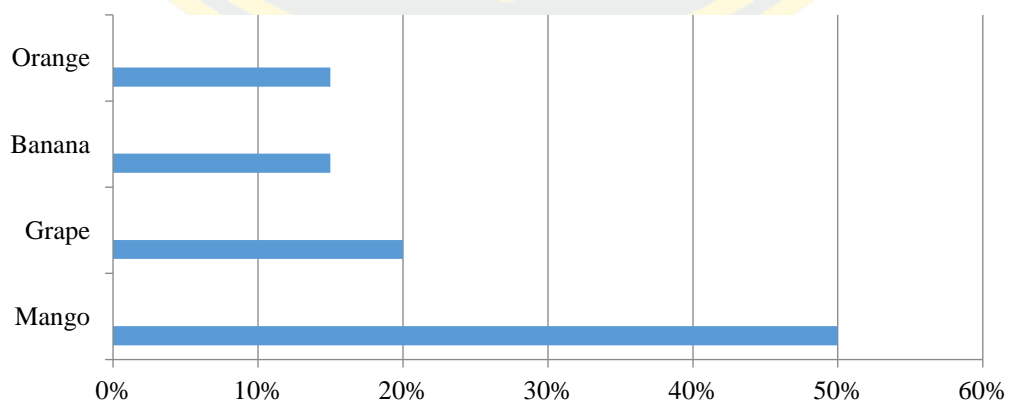


Figure 14 Display of the same set of data in figure 10 in a horizontal bar chart

Based on In and Lee (2017), bars can be created vertically or horizontally. Therefore, by adopting the same data as displayed in Figure 11. above, it can be displayed vertically as follows:

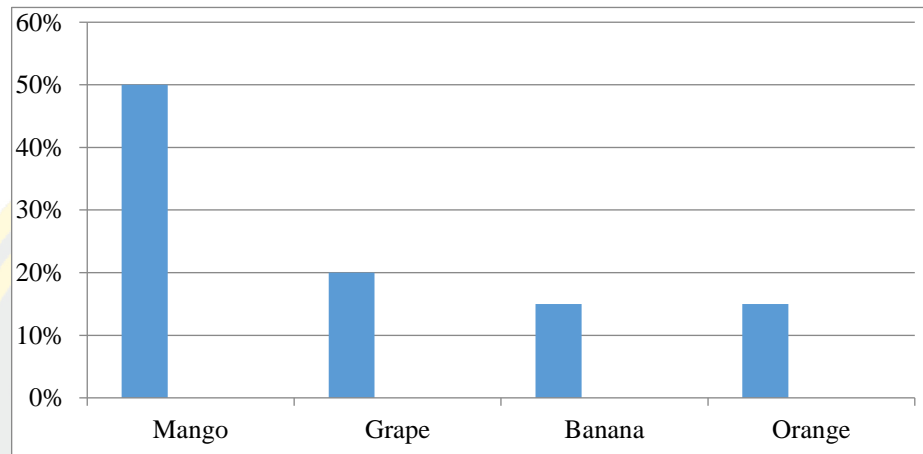


Figure 15 Display of the same set of data in figure 11 with vertical bars

## **CHAPTER 3**

### **RESEARCH METHODOLOGY**

Since the hypothesis of this research stems from the legal problem of the lack of laws on the recognition and enforcement of foreign judgments and an international agreement or treaty on the same issue (for the case study between Thailand and the Lao PDR) to be able to reduce litigation costs, this research shall have to create a specific circumstance for a hypothesis as a case study with some assumptions, and then apply the appropriate research tools to prove that should there be specific laws to govern the recognition and enforcement of foreign judgments, so the litigation costs may be reduced as in the case of the enforcement of a Thai judgment in Lao PDR or vice versa.

Therefore, there is a need for this research to create the circumstance of hypothesis as a case study which is a matter of a cargo claim arising from a cross-border transportation by road from the Lao PDR to Bangkok, Thailand. The goods were sold by B, the seller in Vientiane, Lao PDR to A, the buyer in Thailand. B employed C, the carrier whose registered principal place of business is in Vientiane to carry the goods to Bangkok. C also has a registered branch office in Bangkok, Thailand. During the transit in Thailand, the carrying truck had an accident due to the gross negligence of the truck driver who was C's employee and the poor condition of the carrying truck. The goods were found totally damaged. A opted to sue C in the Central Intellectual Property and International Court (the "IP & IT Court") in Bangkok for cargo damage of THB 15,000,000 (fifteen million Baht only). C filed a defense to deny liability. The IP & IT Court was convinced by the evidence produced by both A and C that the cause of the cargo damage was the gross negligence of C's driver and failure of C to maintain the carrying truck, and thus, C as the carrier could not rely on any limitation or exclusion of liability. Judgment of the IP & IT Court was then rendered in favor of A for the full amount of the claim. The judgment became final as none of the parties in the proceedings filed any appeal. Since C did not have any substantial assets in Thailand, legal execution in Thailand was in vain. Subsequently, A found that, C had assets in Vientiane, Lao PDR which

were sufficient to pay the judgment debts. Due to the substantial amount of the cargo damage of THB 15,000,000 and the fact that C's assets in Vientiane should be sufficient to pay the judgment debt, A decided to bring such amount of the damage to the Court in Vientiane to enforce the judgment of the IP & IT Court in Lao PDR.

The above circumstance is created based on the fact that Thailand and the Lao PDR signed Annex 10 of the Greater Mekong Subregion Cross-Border Transport Agreement (GMS-CBTA), a multilateral agreement which deals with the facilitation of Cross-Border Transport of Goods and People including liability of the carrier for damage to the goods during the international transport by road. Therefore, the judgment debts as awarded by the Thai court for the damage to the goods during cross-border transport from the Lao PDR to Thailand should be recognized and enforceable in the Lao PDR.

The choice of court concept in the above circumstance is in line with Annex 10. According to Article 10 (c) 1) of the Annex 10, the injured party as the claimant is entitled to bring an action concerning the cross-border transport of goods to one of the 4 courts of the Contracting Party:

1. where the carriage originated from or was destined to;
2. where the loss or damage occurred, if localized;
3. where the principal place of business of the carrier is located; or
4. where the habitual residence of the claimant is located.

To achieve the research objectives, the assumption is to be made unavoidably for the reasons discussed earlier in Chapter 2 that Thailand and the Lao PDR had entered into a bilateral agreement to reciprocally recognize and enforce the civil and commercial judgments rendered by the courts in Thailand and the Lao PDR.

In detail, the research methodology to be applied to this case study comprises 6 steps.

First step: This study will adopt the documentary review as an initial method of data collection from thesis, articles, textbooks, and other documents both in the form of hard copy and electronic data to ascertain the fundamental problem of the hypothesis and access to the information about the choice of jurisdiction concept under 6 substantive Thai laws, the Civil Procedure of Lao PDR 2004 including its amended version in 2012, and other international agreements and conventions

concerning the recognition and enforcement of foreign judgments. Four out of the 6 Thai laws concerned are transport laws namely Multimodal Transport Act, B.E. 2548 (2005), International Carriage of Goods by Road Act, B.E. 2556 (2013), International Carriage of Passengers by Road Act, B.E. 2557 (2014) and International Carriage by Air Act, B.E. 2558 (2015). The other 2 Thai laws are the Civil Liability for Oil Pollution Damage Caused by Ships Act, B.E. 2560 (2017) (or “CLC Act”) and the Requirement of Contributions to the International Fund for Compensation for Oil Pollution Damage Caused by Ships Act, B.E. 2560 (2017) (or “FUND Act”) which recognize enforcement of foreign judgments, but these 2 laws are silent on the enforcement procedure.

In addition to the above-mentioned laws, some international Regulations and Conventions on the recognition and enforcement of foreign judgments will be reviewed as well.

The documentary review will extend to cover the principles of “Cost” and its types, e.g. variable cost, direct cost and mixed cost to understand and enable us to classify various types of cost which may have relevance to the costs to be incurred in litigation in court and the associated costs.

The review includes accounting, cost accounting and Activity Based Costs (ABC). Also, for ease of classification of costs and preparation of a comparative table of the costs to be incurred in the 2 different scenario cases between non-recognition and non-enforcement of foreign judgments, and the opposing situation where the recognition and enforcement of foreign judgments exists, the documentary review will extend to “Activity mapping” which will be used in the research as one of the research tools.

Second step: It is the process of data collection to obtain more information publicized by both private and government sectors about the costs concerned, e.g. travel expenses, legal costs and court fees to be incurred in connection with the litigation and enforcement of foreign judgments in both countries. This step includes obtaining information and views by “Interview” as a method or tool of data collection.

The in-depth interview and questionnaire narrowing the scope of interview shall be used as a research tool because the topic of the study is a combination of a legal problem involving Thai law and Lao PDR law which is an issue of social

science and the proof of the possibility of the reduction in litigation costs in terms of numerical value which is a qualitative method.

At the interview, 3 questions will arise: first, the selection of person(s) to be interviewed; second, and the appropriate type of interview and; third, the number of interviewees required.

The first question on selection of the interviewees stems from the fact that Thailand does not have a law on the recognition and enforcement of foreign judgments and has never entered into a related bilateral agreement with the Lao PDR while in Lao PDR, there is no test case of the courts applying the provisions of the Civil Procedure of Lao PDR 2012 to enforce a foreign judgment. Such lack of a specific law implicitly speaks for itself, so the persons to be interviewed should be learned and experienced lawyers or judges or legal scholars who are familiar with the practice and have an in-depth knowledge of the recognition and enforcement of foreign judgments.

Since the topic of the study has an international element i.e. as a case study of the Lao PDR and Thailand and this research is produced in the English language, the interviewees in both Thailand and the Lao PDR who are familiar with English and Thai languages including Lao language for the interviewees in the Lao PDR, and have agreed to participate in the study will be selected as “The key information providers”: by this qualification of the interviewees, the interviews will be made in Thai language without a translator. However, the questionnaire will be made in both Thai and English languages to ensure that the interviewees will perfectly understand the questions.

As for the second problem on the method of interview, individual interview in person (on a face-to-face basis) at the interviewee’s convenient place and time which shall be taped with the prior consent of the interviewee is the first option. However, the method of interview also depends on the decision of each interviewee. In such case, other alternative methods of the interview will be taken into consideration and mutually discussed between the researcher and interviewee.

If the interview on face-to-face basis is not practicable or in case the interviewee requires another alternative method of interview, a non-structured interview in the form of in-depth interview at the convenient place and time to be specified by each interviewee through conference or electronic interview via some

Microsoft programs e.g. MS Team or Google Meet to be transcribed and/ or taped with the interviewees' prior consents shall be adopted.

In any event, the draft statement given by each interviewee will be sent to the interviewee for review and prior approval. In case any interviewee raises any questions on the accuracy of any part of the draft statement, the researcher will review or amend such part and obtain final approval from the interviewee.

The in-depth interview will be made in Thai and it will take approximately 30 minutes depending on the convenience of each interviewee and the quantity of information to be received. The interviewees who are familiar with English and Thai and have agreed to participate in the study shall verify and affirm the accuracy of their statements given during the interviews by way of responding in writing in Thai or English to the questionnaires as the interviewee desires.

In any event, the questionnaire will be forwarded to each participating interviewee's personal email before the interview. Other communications with the interviewees may be made by phone calls, emails or other means.

In case of a face-to-face interview, video conference or electronic interview, the transcribed and taped information derived from the interviewees will be erased and the written responses of the interviewees to the questionnaires will be destroyed within one year from receipt unless the interviewees consent in writing to the disclosure of such written responses to third persons for the purpose of study.

In dealing with the third problem, an assumption is to be made based on the discussion in the above second problem that key information interviews or in-depth interviews are to be required. Therefore, the number of interviewees is likely to be very small as there may be a limited number of experienced lawyers or learned judges or scholars in the matter of the recognition and enforcement of foreign judgments in Thailand and the Lao PDR. As such, the research requires a small population of experienced lawyers or judges or legal practitioners or experienced scholars rather than a large number of law students in law school and, for this reason; the application of non-probability sampling in the form of in-depth interview seems more suitable. Theoretically, a reasonably large number of the population of the interviewees may have importance to the research project, but having pointed out the aforesaid third problem, the researcher plans to interview 2 groups of interviewees, i.e. 2-3

experienced lawyers and judges in Thailand and 2-3 experienced lawyers and/or judges in Lao PDR, totaling 5-6 interviewees, as per the questionnaire attached to this research.

Third step: Once the process of data collection has been completed after the methods of documentary review and interview have been applied, mapping of activities involving litigation, recognition and enforcement of foreign judgments will be prepared to illustrate the activities in each stage through the whole chain of the legal process commencing from the preparation of a lawsuit until enforcement of foreign judgment.

Fourth step: Subsequently, activity-based costing shall be taken into consideration in conjunction with the information and data derived from the interview with the selected interviewees in order to understand the relevant costs as well as the likely amounts involved which shall be allocated to each stage of the activity referred to above. At this stage, 2 comparative matrices shall be prepared; one for the circumstance where enforcement of the foreign judgment is subject to the repetition of a lawsuit in other country and the other for the case where Thailand and the Lao PDR have a specific law and entered into a bilateral agreement on the recognition and enforcement of foreign judgments.

Fifth step: In addition to the 2 comparative matrices, 2 visual features in the form of pie graphs and bar graphs will be used; one to present each cost concerned and illustrate its share as percentage of the total costs in case of non-recognition and non-enforcement of foreign judgment, and the other to present and illustrate the same but when recognized and enforceable. All these graphs will help understanding of the share of each cost concerned.

Sixth step: The final step is the conclusion on of how the litigation costs are reduced as a result of making available laws on the recognition and enforcement of foreign judgments. The information concluded in this step of the research methodology will also be utilized for proposing some recommendations on the issues relating to the topic of this research.

The six steps of research methodology as described above can be illustrated in the flowchart on the next page.

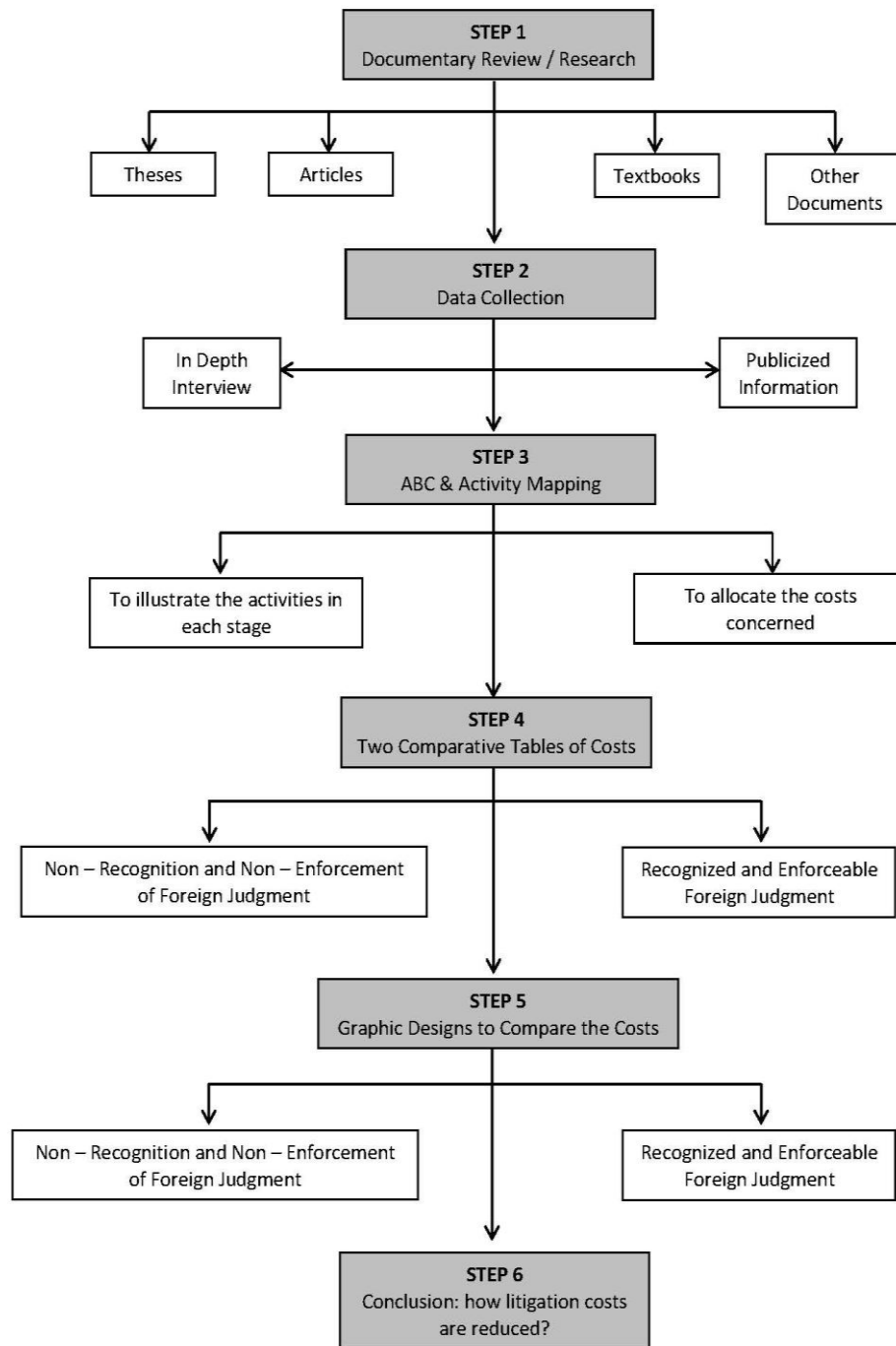


Figure 16 A flowchart of the six steps of research methodology

## **CHAPTER 4**

### **RESULTS**

From the documentary review, gathering of information from various sources relevant to the topic of the research and the in-depth interviews with the competent scholars and practitioners as the key-information provisions in Thailand and Lao PDR, the researcher obtains information sufficient for the purpose of analysis and proof of the legal hypotheses that the litigation costs could be reduced in the case study of Thailand and Lao PDR, if a judgment of the Thai court is recognized and enforceable in Lao PDR, as follows:

#### **Position of the laws of Thailand and Lao PDR on the recognition and enforcement of foreign judgments**

##### **1. Thailand's position**

During the past decades, Thailand has enacted international transport laws, namely the Multimodal Transport Act, B.E. 2548 (2005), International Carriage of Goods by Road Act, B.E. 2556 (2013), International Carriage of Passengers by Road Act, B.E. 2557 (2014) and International Carriage by Air Act, B.E. 2558 (2015) under which the legal concept of the choice of court (or choice of jurisdiction) was recognized by way of these laws allowing the plaintiff to choose one of the competent courts which may be located in different countries. However, none of these laws contains the provisions for the recognition and enforcement of foreign judgments.

Subsequently, the Civil Liability for Oil Pollution Damage Caused by Ships Act, B.E. 2560 (2017) (or "CLC Act") and the Requirement of Contributions to the International Fund for Compensation for Oil Pollution Damage Caused by Ships Act, B.E. 2560 (2017) (or "FUND Act") were enacted. Such enactment enabled Thailand to become a member country of the 2 conventions i.e. International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC) and International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (FUND). Although these 2 relatively

new Thai laws adopt a similar legal concept to recognize the enforceability of the foreign judgments handed down by the courts in the member countries of the said 2 conventions, the CLC and the FUND, they are applicable to the liability for oil pollution damage only. Besides, the CLC Act and the FUND Act do not stipulate the provisions for the enforcement of foreign judgments. Therefore, so far, Thailand has not had a specific law to govern the recognition and enforcement of foreign judgments.

The above problem, the lack of a Thai law to govern the recognition and enforcement of foreign judgments emerged in the last century but it is still unresolved despite many Thai university scholars and lawyers including some learnt judges having suggested the need to have such a specific law.

Currently, to enforce a foreign judgment in Thailand, the plaintiff must sue the same defendant in the Thai court and submit the foreign judgment to the Thai court as a piece of evidence of debt (Office of Judicial and Legal Affairs, 2020).

## **2. Lao PDR's position**

Unlike the legal situation of the Thai laws, Lao PDR is not a member country of the CLC and the FUND, presumably, due to the fact that Lao PDR is a land lock country and thus, ratification of those 2 conventions concerning oil pollution is not required.

However, Lao PDR has a domestic law governing the recognition and enforcement of foreign judgments which was recently improved in 2012, e.g. the Law on Civil Procedures of Lao PDR 2004 as amended 2012 ("CPC, 2012"). Therefore, a judgment rendered by a Thai court can be recognized and enforceable in Lao PDR, subject to the conditions of Lao PDR's law, and as a result, a reduction in litigation costs could be expected.

### **2.1 Two different procedure rules under the CPC, 2012**

As per the CPC, 2012, the procedure for the recognition of foreign judgments is provided as the new provisions of Part XVII in addition to the procedure of the normal civil cases.

2.1.1 The procedure of a normal civil case under Sections 167-247 of the CPA is summarized as follows:

The plaintiff files the lawsuit in the court form with a competent court of the Lao PDR and all foreign documents must be translated in to Lao language and certified by the Judicial Office, Ministry of Justice.

Once the lawsuit is accepted by the court, a case file will be prepared and a writ of summon will be issued to the defendant.

After the defendant has filed a defense answer, the case will be transferred by the chief judge to the judge in charge for a study of the case.

The court summons the parties to attend the hearings for trial. If a mediation fails, the court will commence the trial of the witnesses of all parties on a one-by-one basis, and thereafter, the plaintiff and the defendant will be allowed to question the witnesses. If the witness is a foreigner, a local translator is required.

After completion of the trial, the court will close the case temporarily to consider the evidence and decide in private. Subsequently, the decision of the court will be read in the presence of the parties. If none of the parties in the case files an appeal, the judgement of the First Court is final.

2.1.2 A summary of the procedure of the application for enforcement of foreign judgement under Part XVII of the CPA is as follows:

The creditor in the foreign court must file with the embassy or consult or representative organization of the Lao PDR an application for the recognition of the foreign judgement together with copy of the foreign court's judgement, certificate issued by the foreign court confirming that the judgement is final, the relevant international agreement to which Lao PDR is a party, and other relevant documents. All foreign documents must be translated in to the Lao language and certified by the Judicial Office, Ministry of Justice.

The embassy or consul or representative of Lao PDR forwards the said application together with the documents required to the Ministry of Foreign Affairs in the Lao PDR for passing the same onto the Ministry of Justice so that all these documents are further forwarded to the Supreme People's Court of Lao PDR, and thereafter, the same documents will be sent to the competent court to consider.

The competent court takes those documents to form a case file and lawsuit, assigns it to a judge for examination and invites the chief of the public prosecutor organization to participate in the consideration of the matter.

The court summons the losing defendant who lives in Lao PDR to acknowledge the case and give an explanation. Trial of the application shall commence within 30 days.

If the court is satisfied that;

- 1) The foreign judgement was final,
- 2) The losing defendant in the foreign court has had the opportunity to participate in the case of the foreign court,
- 3) The said case also falls under the jurisdiction of the court of the Lao PDR,
- 4) Such foreign judgement is not against the Constitution and laws of Lao PDR, and
- 5) There are no issues as to why the court should not accept the case, the court of Lao PDR has the authority to recognize the foreign judgement and the applicant is entitled to enforce it against the defendant's assets in the Lao PDR as if the judgement was rendered by the court of the Lao PDR.

2.2 Different procedures of the case result in the different time to be spent in the court: As per the information received from an experienced lawyer in Vientiane, Lao PDR, Sengpunya (personal communications, August 31, 2024) and the office manager of a Thai law firm in Vientiane, Lao PDR, Meesaiyati (personal communications, September 23, 2024 and October 10, 2024), in the first case scenario (like the situation in Thai law) where there is no law on the recognition and enforcement of foreign judgements and the winning plaintiff in the foreign court must file a lawsuit against the losing defendant who lives in Lao PDR as a normal civil case ("The first case scenario"), the procedure should take around 6-8 hours in the court when the merits of the claim in the foreign court can be reviewed and challenged, and all evidence and witnesses of the parties must be produced again. As a result, 2-day hearings are required together with hotel accommodation for the plaintiff's witnesses. On the contrary, if a judgment rendered by the Thai court is recognized and enforceable in the Lao PDR's jurisdiction under the CPC, 2012 ("The second case scenario"), the procedure of the application for recognition of the foreign judgement takes less time, not exceeding 2 hours because there is no witness examination if all documentation meets the legal requirements and the court is

satisfied that there are no grounds to reject the application. As a result, there is no need for the plaintiff's witnesses to stay overnight and thus only a one-day trip is required.

### **Costs**

Due to the differences in the procedures of the proceedings as analyzed under the above topic, the costs to be incurred in the first case scenario and the second case scenario shall also result in the differences in 3 major aspects of the legal costs and expenses to be incurred in the proceeding, as follows:

1. court fees, based on Laos laws on government fees (Ordinances on Official and Services Fees No.002 dated 17 June 2021), the above first case scenario starts from "Lawsuit" which is subject to court fees in Laos currency of LAK 300,000 and LAK 50,000 for forming a case file while the legal procedure in the above second case scenario starts from "An application" which is subject to court fees of LAK 100,000 and LAK 50,000 for forming a case file;

2. lawyer fees, there is no regulation to control the lawyer fees in Lao PDR because fees depend on many factors, e.g. seniority, skill and reputation of the case handler, the amount of the claim and the complication of the case. However, the information derived from the interviewees in Lao PDR is sufficient to conclude that lawyer fees to be incurred in the first case scenario will be greater than those to be incurred in the second case scenario. That is because the first case scenario is more complicated and takes much more time than the second case scenario, and

3. Other expenses; e.g. travel expenses, hotel fees and the time (manhours) for the claimant's staff shall vary according to the length of litigation and procedures of the case. However, certain expenses in the 2 different scenario cases may not be significantly differed, e.g. translation fees of the foreign documents into Laos language. That is because, as per the information received from Lao PDR's lawyers during the in-depth interviews, the same set of documents previously presented to the Thai court will be submitted to the court of the Lao PDR and a certified copy of the Thai judgement should be submitted to the Lao PDR court as a piece of documentary evidence to support the lawsuit in Lao PDR court, but the additional documents in case of the application for recognition are the certified copy of

the international agreement to which Thailand and Lao PDR are the parties, its translation into Lao language and court certification.

Although there may be some miscellaneous expenses e.g. for photo copy charges and telephone charges which are not taken into consideration, it would not affect this research as the total amount of those miscellaneous expenses would be very minimal.

### **Data collection of the costs, expenses and fees concerned**

1. Data used in this research were derived from several sources and can be categorized into 2 groups as follows:

Primary data derived from the in-depth interviews with the 8 selected interviewees (as the key information providers) both in Bangkok, Thailand and Vientiane, Lao PDR. Most of the interviews were performed on a face-to-face basis and the subsequent interviews to seek clarification of any pending queries or to obtain more information were made via electronic means, i.e. email, Line and WhatsApp.

Secondary data obtained from documentary review, the study of textbooks, articles, laws and publications relevant to this research and from public websites.

2. Data concerning the major costs to be applied in this research for the purpose of quantitative analysis, particularly at the next topic of quantitative research results are derived from various sources and some of them are applied on average;

2.1 Based on the information received from the interviewees in Lao PDR, if the claim amount in this case study as awarded by the Thai Court is supposed to be THB 15 million, lawyer fees to be charged on a lump sum basis for the first case scenario should be in the range of 10-15% of the claim (or approx. THB 1,500,000-2,250,000 or THB 1,875,000 on average), and for the second case scenario, not exceeding 5% of the claim (or approx. THB 750,000).

2.2 The exchange rate of Laos currency (“LAK”) and Thai Baht (“THB”) is based on the exchange rate on 16 September 2024 at LAK 664.18 per THB 1 (Exchange-Rates.org, 2024).

2.3 Translation fees are based on the average fees of quotations received from 2 translation shops in Vientiane on LAK 200,000 per page.

2.4 Air fares for a round trip to and from Vientiane and Bangkok are based on the average air fares of Air Asia and Thai Airways for September 2024 (Air Asia, 2024).

2.5 The room rate of hotel in Vientiane, Lao PDR is based on the average rate of three-star hotels located in central area of Vientiane (Trip.com, 2024).

2.6 Travel expenses in Vientiane, Lao PDR are based on the rate of rented AVIS car (Avis, 2024) together with the average price of fuel on 9 September, 2024 (Eppo Update, 2024).

2.7 The manhour of the Thai manager to testify before the court in Vientiane, Lao PDR is based on the average salary (Q1/ 2567) of THB 38,657.70 for the Master's degree graduate available on 10 September 2024 (Bank of Thailand, 2024).

2.8 Lao PDR's Court fees and government fees are based on Laos laws concerned i.e. the Civil Procedure Act, 2012 and Ordinances on Official and Services Fees No.002 dated 17 June 2021.

2.9 Postal charges for registered package available on 4 September 2024 (Thailand Post, 2024).

### **Quantitative research results**

By adapting ABC concept to this research and applying the data received from the in-depth interviews, the cost drivers in the first case scenario where a judgment of the Thai court is not recognized and not enforceable in Lao PDR and the successful plaintiff in the Thai court has to commence a fresh lawsuit against the same debtor in a competent court of Lao PDR can be defined as follows:

Table 5 The cost drivers of the first case scenario (filing of a fresh lawsuit)

Activities	Major costs	Cost drivers
1. The plaintiff files a lawsuit for a claim amount of THB 15 million in the court of Lao PDR.	1.1 average lawyer fee on lump sum basis of THB 1,875,000 for one case 1.2 translation fee of 15-page Thai judgment (on average) at LAK 3,000,000 (THB 4,516.84) 1.3 court certification fee of 15-page Thai judgment (on average) at LAK 325,000 (THB 489.32) 1.4 translation fee of 10-page of claim documents e.g. invoices, packing list, waybill and claim letter LAK 2,000,000 (THB 3,011.23) 1.5 court certification fee of 10-page of claim documents LAK 225,000 (THB 338.76) <b>Total: THB 1,883,356.15</b>	Time consumed lengthy litigation
2. The court accepts the case and summons the defendant to join the case.	2.1 court fee of LAK 300,000 (THB 451.68) and LAK 50,000 (THB 75.28) <b>Total: THB 526.96</b>	The procedure of a normal civil case
3. Attending a mediation in court	3.1 THB 6,408.92 a round-trip air fare from Bangkok to Vientiane, 3.2 LAK 1,299,976.50/ Day (THB 1,957.26) of travel expenses in Lao PDR,	Number of the trip and mediation

Table 5 (Continued)

Activities	Major costs	Cost drivers
	3.3 THB 1,288.18 of manhour of the plaintiff's Thai manager as the representative plus THB 4,000 allowance/ Day <b>Total: THB 13,654.36</b>	
4. The 2-day litigation starts from the opening of the case by the court, witness-examinations, cross-examinations of the court and the parties and participation of the public prosecutor, an internal meeting of the court to discuss the likely decision.	4.1 THB 6,408.92 a round-trip air fare from Bangkok to Vientiane, 4.2 THB 2,146/ Night hotel fee, 4.3 LAK 2,599,953/ 2 days (THB 3,914.53) of travel expenses in Lao PDR, 4.4 THB 2,577.18 of manhour of the plaintiff's Thai manager to testify in the court for 2-day hearings plus THB 8,000 allowance/ 2 days 4.5 translator fee of LAK 8,500,000/ Day (THB 12,797.73) <b>Total: THB 35,844.36</b>	2-day hearings
5. The court reads the judgment (approx. one month for the completion of witness-examination).	5.1 THB 6,408.92 a round-trip air fare from Bangkok to Vientiane, 5.2 LAK 1,299,976.50/ Day (THB 1,957.26) of travel expenses in Lao PDR,	One time

Table 5 (Continued)

Activities	Major costs	Cost drivers
	5.3 THB 1,288.18 of manhour of the plaintiff's Thai staff for 1-day hearing plus THB 4,000 allowance/ Day <b>Total: THB 13,654.36</b>	
<b>Grand total</b>	<b>THB 1,947,036.19 (cost pool)</b>	

In the second case scenario where a Thai judgment is recognized and enforceable in Lao PDR, the cost drivers can be defined as follows:

Table 6 Cost drivers for recognizing and enforcing Thai judgments in Lao PDR

Activities	Major costs	Cost drivers
1. The plaintiff files an application for enforcement of a Thai judgment with Embassy of Lao PDR in Bangkok together with documents concerned.	1.1 lawyer fee for filing the application till judgement on lump sum basis of THB 750,000 1.2 translation fee of 10-page of claim documents at LAK 2,000,000 (THB 3,011.23) 1.3 court certification fee of 10-page of claim documents at LAK 225,000 (THB 338.76) 1.4 translation fee of 15-page Thai judgment (on average) at LAK 3,000,000 (THB 4,516.84) 1.5 court certification fee of 15-page Thai judgment (on average) at LAK 325,000 (THB 489.32)	Number of documents concerned

Table 6 (Continued)

Activities	Major costs	Cost drivers
	1.6 translation fee of 10-page of the international agreement concerned (GMS-CBTA, annex 10) at LAK 2,000,000 (THB 3,011.23)  1.7 court certification fee of 10-page of the international agreement concerned (GMS-CBTA, annex 10) at LAK 225,000 (THB 338.76)  <b>Total: THB 761,706.14</b>	
2. The Embassy forwards the application and documents to the Foreign Ministry of Lao PDR for forwarding the same to the Ministry of Justice who will send it to the competent court to appoint the judge in charge.	2.1 Thai postal charges of THB 650 (for the Embassy to collect from the applicant)  <b>Total: THB 650</b>	One time
3. The trial of the application starts from the court summoning the losing debtor in the	3.1 court fee of LAK 100,000 (THB 150.56) and LAK 50,000 (Total: THB 225.84 THB 75.28)	One time

Table 6 (Continued)

Activities	Major costs	Cost drivers
foreign court to acknowledge the application and provide clarification.		
4. The court accepts the application without the witness-examination (if all documents meet the legal requirements) and renders a judgment to recognize the Thai judgment.	4.1 THB 6,408.92 a round-trip air fare from Bangkok to Vientiane, 4.2 LAK1,299,976.50/ Day THB 1,957.26) of travel expenses in Lao PDR, 4.3 THB 1,288.18 for the time of the plaintiff's Thai staff for a 1-day hearing plus THB 4,000 allowance/ Day <b>Total: THB 13,654.36</b>	One-day trip/ One-day hearing
<b>Grand total:</b>	<b>THB 776,236.34 (cost pool)</b>	

The share of each activity cost in the costs pool (total costs) of the Table 5 can be presented in a pie diagram as follow:

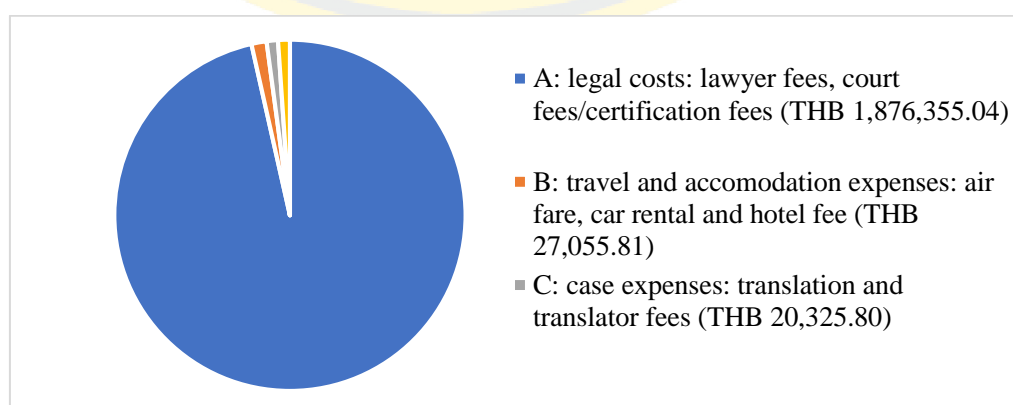


Figure 17 Individual cost shares of table 5

The share of each activity cost in the costs pool (total costs) of the Table 6 can be presented in a bar diagram as follows:

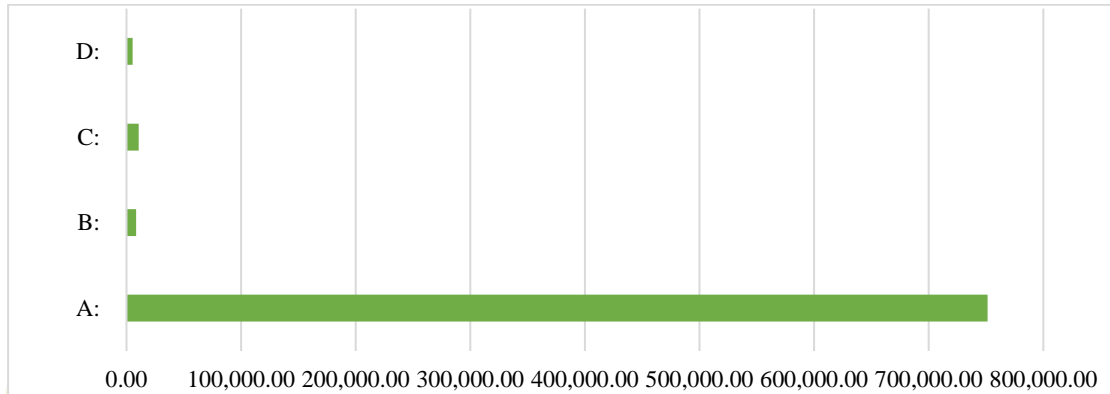


Figure 18 Individual cost shares of table 6

- A:** legal costs: lawyer fees, court fees and certification fees.
- B:** travel and accommodation expenses.
- C:** case expense (translation and postal charge).
- D:** Manhour costs for the plaintiff's representative.

Since lawyer fees as the largest part of the cost pool can vary according to negotiations, deletion of the lawyer fees from the cost pool of each scenario shall indicate the levels of the costs and expenses of the above items A (exclusive of lawyer fees), B, C and D as presented in the bar chart below:

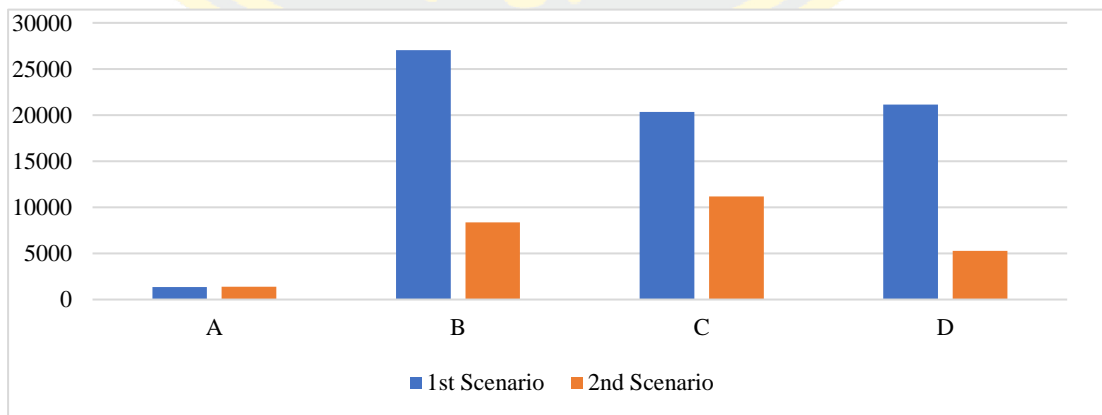


Figure 19 Comparison of cost shares of table 5 and table 6 (exclusive of lawyer fees)

## **CHAPTER 5**

### **CONCLUSION AND DISCUSSION**

#### **Conclusions**

By applying the research methods i.e. literature review of the costs and the laws of Thailand and Lao PDR, the in-depth interview with the key information providers both in Thailand and Lao PDR who are the selected lawyers and scholars competent to the topic of the research, and adaptation of activity-based costing (ABC) to find out the cost pool and cost driver of the enforcement of a foreign judgment in the 2 different scenario of the case study of Thailand and Lao PDR, the researcher obtained sufficient information to achieve the research objective to demonstrate and prove in term of numeral and monetary value that the litigation costs in the enforcement of foreign judgment could be reduced by making available laws on recognition and enforcement of foreign judgment as analyzed in Chapter 4, Results.

In conclusion, the data derived from the data collection suggests the followings:

1. Despite the fact that Thailand enacted the 4 international transport laws which recognize the choice of court and the 2 laws concerning oil pollution under which foreign judgments rendered by the court in the member countries of the CLC and the FUND are enforceable in Thai jurisdiction, none of these Thai laws is applicable in general to the enforcement of foreign judgments in the matter of civil disputes other than oil pollution claims. This legal situation is different from the legal position of Lao PDR's new CPC which contains the specific provisions regarding the enforcement of foreign judgments.

2. In the case study of this research where a judgment of the Thai court is to be enforced in the 2 scenario cases in the jurisdiction of Lao PDR, namely, in the case where a fresh lawsuit is required because of no law on recognition and enforcement of foreign judgment and on the contrary, where there is such a law, it is found that the availability of the law on recognition and enforcement results in a shorter procedure of the proceedings and facilitation of the enforcement of foreign judgment.

3. As per the quantitative research results as discussed in the previous Chapter, the legal cost in respect of lawyer fees for the claim about of THB 15,000,000 is the largest part of the cost pool. The charge for lawyer fees depends on the procedures; in case of the application for the enforcement of a foreign judgment, the charge is THB 750,000 while the charge for filing a lawsuit till judgement is THB 1,875,000. The discrepancy of THB 1,125,000 is a saving and at the same time, is a reduction in the litigation cost in respect of lawyer fees.

4. If the charge for lawyer fees is not taken into account, the total amounts of other costs and expenses as per Table 1 (for the first scenario) and Table 2 (for the second scenario) are THB 69,890.19 and THB 26,236.34 respectively. In such case, there would be savings of THB 43,653.85 for the costs and expenses, exclusive of lawyer fees.

5. Since the total legal costs and expenses concerned as per Table 1 are THB 1,947,036.19 while the total costs and expenses in Table 2 are THB 776,236.34, there would be savings of THB 1,170,799.85 in total.

6. The savings mentioned in the above 3-5 items are the result of the differences in the procedures of the case which causes the different lengths of time and complexity in litigation.

## **Discussion**

The result of the research demonstrates a plausible reduction in litigation costs if a judgement in one country is recognized and enforceable in another country. However, such reduction requires legal mechanism by making available law on the recognition and enforcement of foreign judgments.

In the case study of this research, the judgment of the Thai court is recognized and enforceable in Lao PDR, the difference in the length of time and the procedures of the case is the essential variable in the cost pool of all legal costs, expenses and charges involved in the enforcement of foreign judgment; the longer procedure, the longer time and the greater costs of the litigation. The longer and more complication of the procedure of the enforcement of the foreign judgment is also the significant variable of the cost drivers directly and resulting in a substantial reduction in the litigation costs and expenses concerned.

The outcome of the research also reveals the connections and interrelationship between the making of available law on the recognition and enforcement of foreign judgment, the length of time and procedure of the litigation, the cost pool of the enforcement and the savings (as the reduction in the costs). Such connection and interrelationship can be illustrated in the chart below.

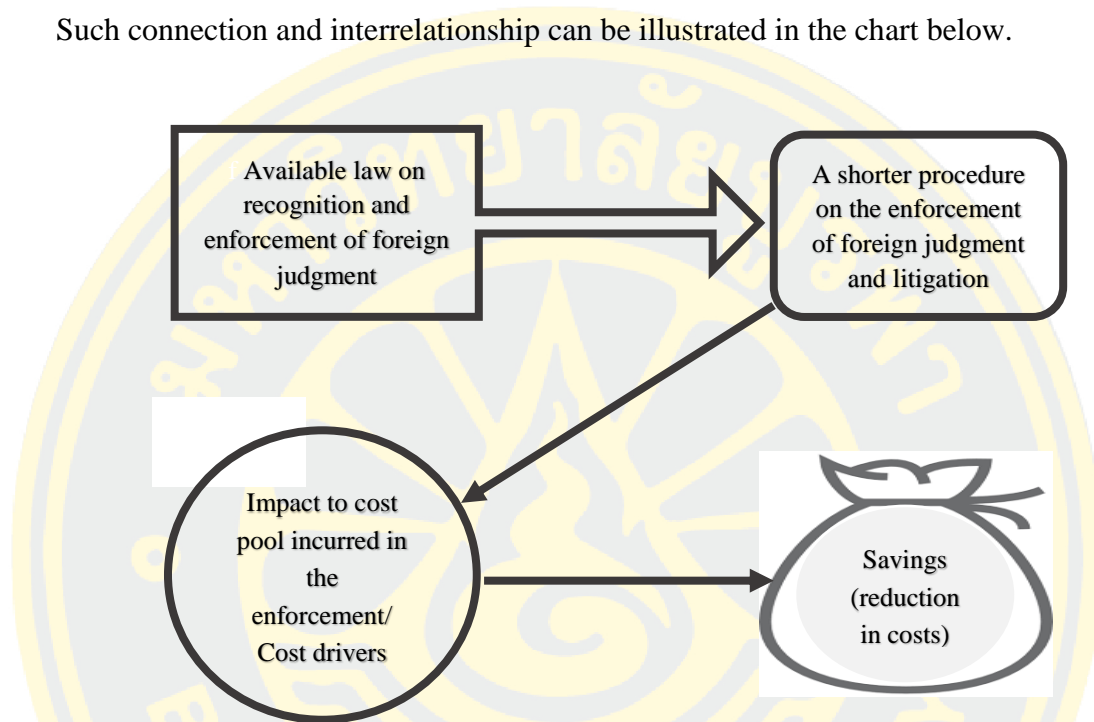


Figure 20 Connections and interrelationship between the 4 essential factors

### **Recommendation**

There are some recommendations for implementing the reduction in legal costs by making available laws on recognition and enforcement of foreign judgement.

#### **1. Recommendation on bilateral and multilateral agreement**

In general, the reduction in legal costs, international agreements could be achieved either bilaterally or multilaterally.

1.1 The implementation of making available law on recognition and enforcement of foreign judgments should bring a greater benefit if an agreement on recognition and enforcement of foreign judgements is multilaterally concluded in the form of international agreement or treaty signed by the contracting states located in the same sub region or region such as the member countries of GMS and ASEAN.

1.2 The stipulations of the CLC and the FUND are good example of the combination of liability of the member countries for oil pollution damage and the enforceability of foreign judgment in the other member countries under the same convention if such foreign judgment is rendered by the court in any member country and meets the conditions required by the convention. Therefore, the members of ASEAN and GMS should adopt the above combination concept of the CLC and the FUND to implement a multilateral agreement in the form of ASEAN agreement on the recognition and enforcement of the judgments rendered in the member states. Likewise, GMS should do the same. That is because, for example, in case of ASEAN, after the member countries have signed ASEAN Agreement on multimodal transport, they are bound to share the same liability regime of an international agreement for multimodal transport and thus, they should further share the same procedural rules for enforcement of judgments rendered in other member states in the matter of multimodal transport.

1.3 In consequence of the above 1.2, by adopting the same regime of civil liability under the same multilateral agreement as discussed above, the enforcement of foreign judgment rendered by a rendering court in one contacting stage will not cause a problem of judicial sovereignty between the rendering court and the enforcing court.

1.4 In addition, due to the differences in the legal position of each country on the theory of law i.e. the monism country vs dualism country, the law(s) of each country concerned should also ensure that such multilateral agreement on the recognition and enforcement of foreign judgments will give binding effect on the people in their respective countries; particularly, in the monism country (like Thailand) where the international agreements or conventions must be transformed into national laws.

## **2. Recommendation on improvement of Thai law**

As a matter of fact, Thailand does not have a specific law on the recognition and enforcement of foreign judgment and this is a question leading to the legal controversy and the different views of Thai scholars and lawyers for many decades which has not been resolved while this research on the case study of Thailand and Lao PDR can demonstrate and suggest the reduction in litigation costs if a Thai judgment is recognized and enforceable in Lao PDR.

In consequence of the above, a question arises as to how Thailand should solve the problem of the lack of a specific law to govern the recognition and enforcement of foreign judgments.

There are some methods to solve the problem such as:

2.1 to leave this legal problem with the court to exercise its own discretion to lay down the rule for recognition and enforcement of foreign judgment. The researcher does not support this method because Thailand is a civil law country and thus, judgment of the court shall bind the parties in the case only,

2.2 amendment of the Civil Procedure Code to incorporate the new provisions for the recognition and enforcement of foreign judgments,

2.3 enactment of a specific law in the form of an Act on Enforcement of Foreign Judgments B.E. ....,

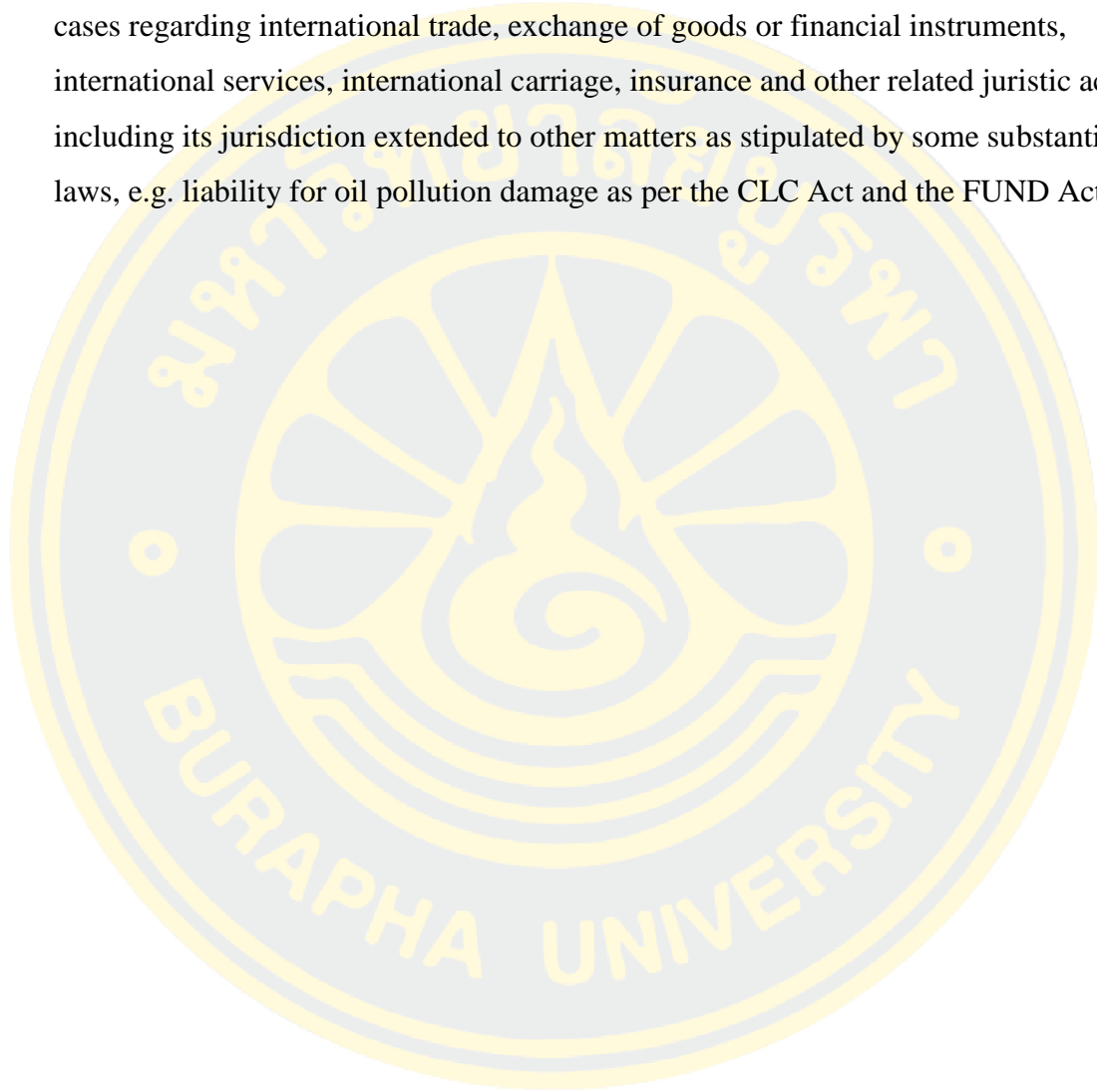
2.4 amendment of Rules for Intellectual and Property and International Trade Cases to recognize and enforce the foreign judgments in the matters falling within the jurisdiction of the IP & IT Court.

The researcher is of the view that the first option (2.2 above) should be preferable for the following reasons:

If a foreign judgment is recognized and enforceable in Thai jurisdiction, the legal execution of the foreign judgments e.g. confiscation of the judgment debtor's assets in Thailand must be carried out in the same manner and under the same provisions of the legal execution as provided by the Civil and Commercial Code applicable to the judgment rendered by the Thai courts. Therefore, both parts of the law i.e. the recognition and enforcement of foreign judgment and the legal execution procedure should be compiled into the same law for ease of use. By this method, enactment of an Act on amendment of the Civil Procedure Code (No. ....) B.E. .... is required for amending the current provisions of Division III, Title II of the Civil Procedure Code.

For the reason in the preceding paragraph, the above option 2.3, enactment of a new Thai law as an Act on the Recognition and Enforcement of Foreign Judgments B.E. ... is excessive in terms of the procedural rules for enforcement of judgments.

As for the option 2.4, the weak point of this option is that the IP & IT Court was established under the Act for the Establishment of and Procedure for Intellectual Property and International Trade Court B.E. 2539 (1996) and thus, the IP & IT Court shall have jurisdiction over certain matters as stipulated by this Act, such as civil cases regarding international trade, exchange of goods or financial instruments, international services, international carriage, insurance and other related juristic acts, including its jurisdiction extended to other matters as stipulated by some substantive laws, e.g. liability for oil pollution damage as per the CLC Act and the FUND Act.



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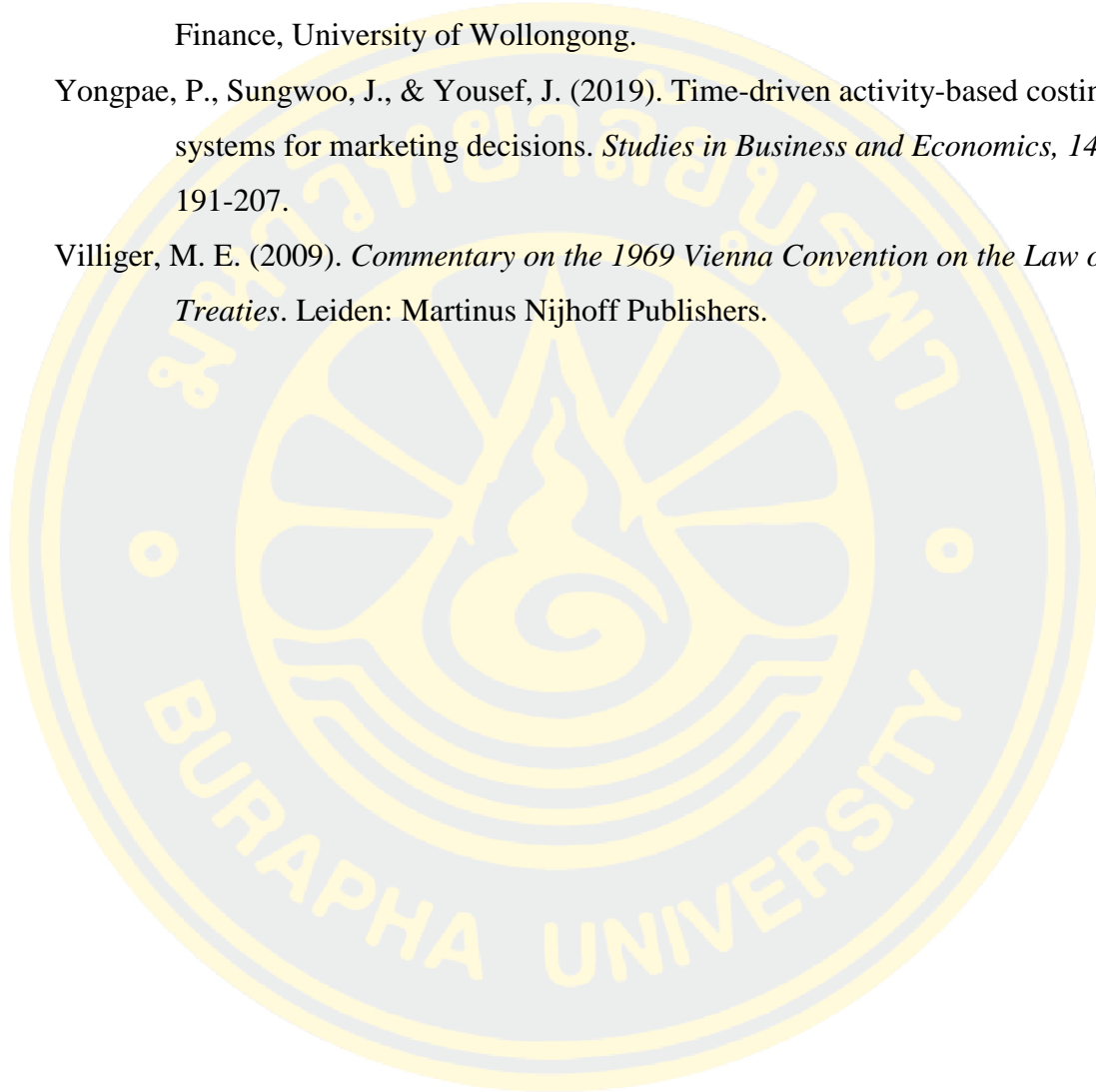
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