

In your legal system: (Malaysia)

1. What national laws and regulations govern cross-border trade and foreign investment?

Please indicate as follows, as fully as possible:

Names of laws and regulations and the relevant webpages where these may be found in English (where available):

Name of Laws/Regulations Relevant Weblinks (if any) Relevant Ministry/Agency

ASEAN Free Trade Area

- ASEAN has also concluded FTAs with China, Japan, Korea and India, as well as Australia and New Zealand.

- ASEAN-Australia and New Zealand
- ASEAN-China
- ASEAN-India
- ASEAN-Japan
- ASEAN-Korea

2. What free trade agreements has your country entered into?

Names of FTAs

Relevant Weblinks (if any)

Malaysia's Free Trade Agreements are as follows:

- Malaysia-Australia FTA
- Malaysia-Chile FTA
- Malaysia-India FTA
- Malaysia-Japan: FTA
- Malaysia-New Zealand FTA
- Malaysia-Pakistan FTA
- Malaysia-Turkey FTA
- Trade Preferential System- Organisation of Islamic Conference(TPS-OIC)
- Developing Eight (D-8) Preferential Tariff Agreement (PTA)

Website: <http://fta.miti.gov.my/index.php/pages/view/4>

- The Group of Developing Eight (D-8) comprises eight Islamic countries, namely, Bangladesh, Indonesia, Iran, Malaysia, Egypt, Nigeria, Pakistan and Turkey.
- The D-8 Preferential Tariff Agreement (PTA) is designed to gradually reduce tariffs and other barriers to trade on specific goods in order to promote intra-trade among D-8 members.
<http://fta.miti.gov.my/index.php/pages/view/d-8pta?mid=38>
- The Framework Agreement on Trade Preferential System among the Member States of the Organisation of the Islamic Conference (TPS-OIC) sets out the general principles towards establishing a trade preferential system among the OIC countries.
- Website: <http://fta.miti.gov.my/index.php/pages/view/tps-oic?mid=41>

3. What bilateral or regional investment agreements (other than those of ASEAN as a group) has your country entered into?

Investment Agreements

Relevant Weblinks (if any)

Malaysia's Free Trade Agreements under Negotiation are as follows:-

- Malaysia-European Union Free Trade Agreement (MEUFTA)
- Trans-Pacific Partnership Agreement (TPP)
- Malaysia-EFTA Economic Partnership Agreement (MEEPA)
- ASEAN - Hong Kong Free Trade Agreement (AHKFTA)

4. If an investor obtains a money judgment in another ASEAN country, can the judgment be enforced in your country? Yes

A party who has obtained a money judgment from a foreign country can enforce the judgment by invoking the Reciprocal Enforcement of Judgments Act 1958. However, it should be noted that such judgments must be a judgment of a superior court. In addition, according to the First Schedule of the Reciprocal Enforcement of Judgments Act 1958, this Act applies only to the following two ASEAN countries, namely Singapore and Brunei Darussalam.

Alternatively, a judgment creditor can enforce the foreign money judgment in Malaysia under the common law. Hence, in the case of the other eight ASEAN countries, the judgment creditor cannot rely on the statutory regime but will have to proceed under the common law to enforce the money judgment from these countries.

a) What is the relevant law/regulation?

In the case of a money judgment from Singapore and Brunei Darussalam, the relevant legislation would be the:

- (i) Reciprocal Enforcement of Judgments Act 1958; and
- (ii) The Rules of Court 2012.

In the case of a money judgment from any of the other eight ASEAN countries, the relevant law would be the:

- (i) Common law principles; and
- (ii) The Rules of Court 2012.

b) What is the available procedure?

In the case where the Reciprocal Enforcement of Judgments Act 1958 applies, the main steps that a judgment creditor will have to take would be as follows:

- (i) The foreign judgment will have to apply to the High Court for such a judgment to be registered: section 4 of the Reciprocal Enforcement of Judgments Act 1958;
- (ii) The procedure for registration of the foreign judgment is governed by Order 67 of the Rules of Court 2012;
- (iii) The application for registration shall be made by Originating Summons that must be supported by an affidavit: Order 67 rules 2 and 3 of the Rules of Court 2012;
- (iv) The judgment creditor may be ordered to provide security for the cost of the application for registration and of any proceedings which may be brought to set aside the registration: Order 67 rule 4 of the Rules of Court 2012;
- (v) Once an order for leave to register a judgment has been given, it will be kept in a register and the order and notice of registration must be served on the judgment debtor: Order 67 rules 5 – 7 of the Rules of Court 2012;
- (vi) Execution of the judgment that has been registered will follow suit.

In the case of a money judgment from any of the other eight ASEAN countries, the steps that a judgment creditor will have to take differ quite significantly from the statutory regime. In such as case, the judgment creditor will have to:

- (i) Commence an action in the High Court (the basis of the cause of action is the foreign judgment itself – a debt between the parties);
- (ii) The judgment creditor will have to go through the entire civil litigation process.
- (iii) The judgment obtained can then be enforced and executed accordingly.

c) When might your system reject such enforcement nonetheless? (e.g. grounds)

The Reciprocal Enforcement of Judgments Act 1958 expressly states the pre-conditions for the registration of a foreign judgment and stipulates the grounds for judgments that have been registered to be set aside.

The pre-conditions are found in section 4(3) (a) and they are:

- (i) The money judgment must be final and conclusive as between parties thereto;
- (ii) The money judgment must not be in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; and
- (iii) The money judgment must be from a country or territory mentioned in the First Schedule.

The application for setting aside is governed by Order 67 rule 9 of the Rules of Court 2012.

Section 5(1) (a) of the Reciprocal Enforcement of Judgments Act 1958 stipulates that a judgment that has been registered **shall** be set aside if the court is satisfied that:

- (i) that the judgment is not a judgment to which this Part applies or was registered in contravention of this Act;
- (ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case;
- (iii) that the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear;
- (iv) that the judgment was obtained by fraud;
- (v) that the enforcement of the judgment would be contrary to public policy in Malaysia; or

- (vi) that the rights under the judgment are not vested in the person by whom the application for registration was made;

On the other hand, section 5(1)(b) of the Reciprocal Enforcement of Judgments Act 1958 provides that a judgment that has been registered **may** be set aside if the court is satisfied that "the matter in dispute in the proceedings in the original court had previously to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter".

In a common law action for enforcement of a foreign judgment, the judgment creditor has to prove that the foreign judgment is a final judgment conclusive upon the merits of the claim. Such a judgment must be for a fixed sum and must also come from a "competent" court. The defences that are available to a defendant in a common law action brought on the basis of a foreign judgment include lack of jurisdiction, breach of natural justice, fraud and contrary to public policy.

5. Is your country a signatory to the New York Convention on the recognition and enforcement of international arbitration awards?

Yes

If yes, what is the domestic implementing legislation for the New York Convention in your country?

Malaysia enacted the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 1985 to give effect to the provisions of the New York Convention. This piece of national legislation that acted as the enabling instrument to recognize the application of the New York Convention in Malaysia remained in force until it was repealed by the Arbitration Act 2005.¹

All matters pertaining to the recognition and enforcement of awards are now dealt with under section 38 and section 39 of the Arbitration Act 2005. Both sections 38 and 39 are analogous to Articles 35 and 36 of the United Nations Commission on International Trade Law (UNCITRAL) Model Law.²

¹ See section 51 of the Arbitration Act 2005. The forerunner to the Arbitration Act 2005 was the Arbitration Act 1952.

² The grounds for setting aside an arbitral award are dealt with in section 37 of the Arbitration Act 2005.

6. Is your country a party to the ICSID Convention?

Yes

7. Does your system have an agency or team that is designated to address investor complaints or to assist aggrieved investors (particularly from ASEAN)?

Yes

The Malaysian Ministry of International Trade and Industry.