

Direct Jurisdiction: Asian Perspectives

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The fifteen Asian jurisdictions informatively surveyed in this book may be categorised into different legal systems: common law legal systems (Hong Kong, Malaysia, Singapore, Myanmar, and India), civil law legal systems (mainland China, Taiwan, Japan, South Korea, Thailand, Vietnam, Cambodia, and Indonesia), and mixed legal systems (Sri Lanka and the Philippines). This commendable study underscores the importance of comparative law in the development of Asian Private International Law (PIL) and highlights the “international” dimension of PIL as especially pertinent for initiatives to harmonise PIL rules in Asia and the current Hague Conference on Private International Law’s (HCCH) work on direct jurisdiction.

This study is the second phase of a survey project, with the first phase covering the issue of recognition and enforcement of judgments in Asia, including the question of indirect jurisdiction. Reyes and Lui defined direct jurisdiction as “the power or the ability of the court to hear a case and render a decision on that matter (the jurisdiction to decide)” (p. 3); by contrast, indirect jurisdiction is described as “the power or the ability of a requested court to recognise and enforce a judgment by the rendering court (the jurisdiction to recognise)” (p. 3). However, the phrase “jurisdiction to recognise” could be criticised as it might refer to the recognizing court’s jurisdiction to deal with recognition and enforcement claims. This is particularly pertinent: if Asian jurisdictions have uniform rules on direct jurisdiction, the issue of indirect jurisdiction for the purposes of recognizing and enforcing foreign judgments will not create much of a problem. In turn, it will make foreign judgments in Asia portable, promote economic integration, and enhance the ease of doing business in the region.

Some jurisdictions have codified the rules of international jurisdiction (Korea since 2022, Japan, and Vietnam). By contrast, courts in other jurisdictions *mainly* address international jurisdiction by transposing the rules of domestic territorial jurisdiction to international cases where the rules have not yet been codified (for example, in Thailand, Indonesia, China, and Taiwan).

Interestingly, the survey demonstrates that while the rules of direct jurisdiction across Asian jurisdictions differ, they also share some similarities. The main area of divergence among the Asian countries studied is the grant of anti-suit injunctions, which is a popular difference between common law and civil law legal systems. In terms of similarities between the rules of direct jurisdiction in Asia, *forum non conveniens* – generally regarded as the domain of common law – is reflected in some ways, even in those Asian countries investigated that are not strictly common law jurisdictions. Sri Lanka (and perhaps Thailand) is an exception, where this doctrine is not approved.

Jurisdiction agreements were generally recognized in the Asian jurisdictions surveyed, especially in developed legal systems like Japan, Hong Kong, Taiwan, South Korea, the

Philippines, and Singapore. Further, the rules on sovereign and diplomatic immunity are also uniform across the Asian jurisdictions studied since these jurisdictions generally recognize the distinction between the modern principles of absolute and restrictive immunity in international law. Hence, where a sovereign state or its entity is engaged in a private matter, such as a commercial or employment transaction, it may be impleaded in a foreign court.

I commend this instructive and useful book and hope that more is published in the future.

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