

**Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of Hong Kong**

On 14<sup>th</sup> July 2006, the Arrangement on Reciprocal Recognition and Enforcement of Judgment in Civil and Commercial matters (“the Arrangement”) was signed between Mainland China and Hong Kong. The Arrangement has not yet taken effect. To give effect to the Arrangement, a judicial interpretation is required to be promulgated in Mainland China and implementing legislation is required to be passed in Hong Kong; On the Hong Kong side, a Mainland Judgment (Reciprocal Enforcement) Bill (“the Bill”) was gazetted on 23<sup>rd</sup> February 2007 and the 1<sup>st</sup> reading of the Bill took place on 7<sup>th</sup> March 2007. Since the implementation of the Arrangement will have significant impact on cross-border and commercial activities between Mainland China and Hong Kong, a Bills Committee has been formed on 9<sup>th</sup> March 2007 to study the Bill.

**Application**

Prior to the signing of the Arrangement, there was no reciprocal enforcement of court judgments between the courts of Mainland China and the courts of Hong Kong. The Arrangement now provides a way to enforce cross-border judgments but it applies only to judgments that satisfy the following criteria:

- i. Commercial contracts that result in a judgment for payment of money;
- ii. Judgments of courts above the Intermediate People’s Courts in Mainland and the courts above the District Court in Hong Kong;
- iii. A valid clause in the commercial contract stating which court that has exclusive jurisdiction;  
and
- iv. Judgments that are final and conclusive, which includes any judgment, ruling, conciliation statement and order of payment in Mainland China, and includes any judgment, order and allocatur in the case of Hong Kong.

**Grounds of refusal**

The application for recognition and enforcement of a judgment will be refused under the following circumstances:

- i. The choice of court agreement is invalid under the place of the original trial, unless the chosen court has determined that the choice of court agreement is valid;
- ii. The judgment has been fully executed;
- iii. The court of the place where enforcement is sought has exclusive jurisdiction over the case according to its law;
- iv. The losing party was not summoned to the original court or has not been given sufficient time to defend his case;
- v. The judgment has been obtained by fraud; or
- vi. The court of the place where enforcement is sought has made a prior judgment on the same cause of action.

Further, an application for recognition and enforcement of a judgment shall be refused by the court concerned if:

- i. The People's Court of Mainland China considers that the enforcement of the Hong Kong judgment is contrary to the social and public interest of Mainland China; or
- ii. The Hong Kong Court considers that the enforcement of Mainland China judgment is contrary to the public policy of Hong Kong.

**Practical consideration**

In principle, the Arrangement should facilitate a judgment creditor to enforce a money judgment in a more expeditious manner. We shall now look into the practical issues that may be encountered when one seeks reciprocal recognition and enforcement of judgments between Mainland China and Hong Kong.

*Application*

The Arrangement has limited application. It is only applicable for commercial contracts. Contracts relating to employment, marriage, winding up, bankruptcy or consumer matters will not be covered. Further, the court may not enforce judgments for equitable reliefs such as orders for specific performance or injunctions.

It is pertinent to have a valid exclusive jurisdiction clause in the commercial contract concerned. If the subject matter of the commercial contract is by law subject to the exclusive jurisdiction of a specific court, then the application for reciprocal enforcement may be refused if the exclusive jurisdiction clause in the contract provides otherwise and hence the clause being invalid. For example, according to the laws of Hong Kong and Mainland China, the court where the immovable property is situated assumes exclusive jurisdiction. If a commercial contract regarding Hong Kong real estate issues states that Mainland China court has exclusive jurisdiction, the said clause is invalid and unenforceable.

*Grounds of refusal*

Where a Mainland judgment is contrary to the “public policy of Hong Kong” or a Hong Kong judgment that is contrary to the “social and public interest of Mainland China”, the judgment will not be reciprocally recognized and enforced. Due to the different legal systems in Hong Kong and in Mainland China, the respective courts do not necessarily share the same view on the definition of “public policy” and “social and public interest”. Under the common law system, “public policy” is a legal concept which is construed narrowly whilst Mainland China courts consider “social and public interest” under the administrative and political spectrum.

*Procedure and time limitation*

The application for reciprocal enforcement requires the applicant to provide a copy of the judgment sealed by the court which made the final judgment or a certificate issued by the original court that verifies the finality of the judgment. The applicant also needs to provide the proof of identity (including individuals or legal corporation).

The Arrangement provides that an application for reciprocal enforcement shall be governed by the jurisdiction where the enforcement is sought. The time limit for application where one or both parties are individuals is one year and if both parties are legal persons, the limitation period is six months.

**Conclusion**

While the Arrangement may provide a mechanism to recognize and enforce money judgment reciprocally between Mainland China and Hong Kong, its application is limited and there are practical difficulties on effective implementation of the Arrangement. Having said that, both places are striving their best efforts to instigate appropriate legislations and promulgate relevant judicial interpretation to give full effect to the Arrangement. The signing of the Arrangement is a breakthrough for the judicial systems in Mainland China and in Hong Kong. Whether the Arrangement will become a useful and effective system for reciprocal recognition and enforcement of judgments relies on the continuing effort and development by the Mainland China and Hong Kong.