

**New Arrangement on Reciprocal Recognition and Enforcement of Judgments
by the Courts of the PRC and the HKSAR**

Since the sovereignty of Hong Kong was returned to China in 1997, cooperation and interaction between businesses and individuals of the two jurisdictions have grown rapidly, so as disputes across the borders. More and more civil and commercial disputes in Hong Kong nowadays involve individuals, businesses and assets in Mainland China. However, since Hong Kong as a special administrative region has remained judicially independent from the Mainland, there have always been issues regarding cross-border enforcement of judgments. On 18 January 2019, the HKSAR government and the Supreme People's Court of China signed the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region ("the 2019 Arrangement"). This new arrangement is made on the basis of previous arrangements but establishes a more comprehensive mechanism for mutual enforcement of judgments between Hong Kong and Mainland China.

Previous Arrangements

Although the return of sovereignty took place in 1997, the first arrangement on mutual enforcement of judgments between Hong Kong and China only came into existence in 2006. During the period of 1997 to 2006, if a judgment creditor wished to enforce a Mainland judgment in Hong Kong, he must commence a new action in the High Court to enforce the judgment under common law.

In July 2006, Hong Kong and China entered into a "Choice of Court Arrangement", which was subsequently amended in February 2008. Pursuant to the Choice of Court Arrangement, a Mainland judgment may be registered in Hong Kong for enforcement and vice versa. A judgment creditor under a Mainland judgment may apply to the Court of First Instance for registration of the judgment if the following conditions are met:-

- (1) the judgment must be a money judgment arising in a business-to-business context;
- (2) there must be a written choice of court clause in favour of a Mainland court in the commercial agreement between the parties in dispute; and
- (3) the judgment must be a final and conclusive judgment enforceable in Mainland China.

The Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) (“MJREO”) came into force in August 2008 to give effect to the Choice of Court Arrangement.

In June 2017, the Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases (“the Matrimonial Arrangement”) was signed to cover various types of civil judgments in relation to matrimonial matters. However, this arrangement has yet to be implemented.

The New Arrangement

Scope

Under the 2019 Arrangement, the scope of application of the registration mechanism has been much widened to cover both monetary and non-monetary judgments in civil and commercial matters. Civil damages awarded in criminal cases will also be covered, although any punitive or exemplary part of the damages provided in the judgment would not be recognised and enforced. There are however exceptions for punitive damages in cases regarding intellectual property infringement.

The 2019 Arrangement has listed out a number of areas where it would not apply to, including matrimonial and family disputes (which shall be governed by the Matrimonial Arrangement of 2017), succession or administration of estate, bankruptcy, marine pollution and arbitration etc.

Further, the requirement that the judgment must be final has been eliminated, likely due to the difficulty in ascertaining the finality of Mainland judgments. Under the new regime, as long as the judgment is made by one of the Mainland courts listed in the 2019 Arrangement, and provided it is certified that the judgment is enforceable in the Mainland, the judgment would be considered as registrable in Hong Kong. The same applies if one seeks registration of a Hong Kong judgment in the Mainland.

Grounds for Refusal of Registration

Same as the Choice of Court Arrangement, the 2019 Arrangement sets out grounds for refusing recognition and enforcement of a judgment. The grounds provided in the new arrangement are similar to those stated in the previous arrangement and under common law. In summary, the Court of First Instance shall refuse to register a judgment if:-

- (1) The Mainland court which gave the judgment lacked jurisdiction over the action. The Mainland court is considered to have jurisdiction over the action if:
 - i. the place of residence/ place of business of the Defendant is in the Mainland;
 - ii. in case of contractual dispute, the contract was performed in the Mainland;
 - iii. in case of tortious dispute, the infringing act was committed in the Mainland;
 - iv. the parties in dispute had agreed in writing that the dispute shall be resolved in a Mainland court; or
 - v. the parties did not raise objection to the jurisdiction of the Mainland court and appeared in Mainland proceedings.
- (2) The Defendant was not legally summoned or was not given reasonable opportunity to defend his case in the Mainland proceedings;
- (3) The judgment was obtained by fraud;
- (4) A Hong Kong court has already accepted an action, rendered a judgment or recognised a judgment given by another jurisdiction on the same dispute; or
- (5) An arbitral award has been made on the same dispute.

Apart from the mandatory refusal grounds above, the 2019 Arrangement has specified that the Court may refuse recognition and enforcement of a judgment if it is manifestly against public interest to do so. Whether the recognition and enforcement of a judgment shall be refused under this ground would be entirely at the Court's discretion.

The same refusal grounds would apply when a Mainland court determines whether a Hong Kong judgment can be registered in the Mainland for recognition and enforcement.

Procedures

Currently, the MJREO states that the time limit for making an application to register a Mainland judgment in Hong Kong is 2 years from the date which the judgment takes effect. In the 2019 Arrangement, it is stated that the time limits, procedures and means for a judgment creditor to apply for recognition and enforcement of a judgment shall be governed by the law of the requested place (i.e. the place where the judgment creditor applies for registration of the judgment). As such, once the 2019 Arrangement is

implemented, it is likely that the time limit for enforcing a Mainland judgment in Hong Kong would be governed by s.4(4) of the Limitation Ordinance (Cap. 347) and the same time limit for enforcing a local judgment, i.e. 12 years from the date on which the judgment became enforceable, would apply. This is however subject to any special provisions to be enacted for the purpose of implementation of the 2019 Arrangement.

Implementation of the New Arrangement

The 2019 Arrangement, once implemented through enactment of a new legislation or amendment of the current MJREO in Hong Kong and through promulgation of a judicial interpretation in Mainland China, would supersede the Choice of Court Arrangement. However, if a commercial contract is made before the new arrangement comes into effect, the Choice of Court Arrangement remains applicable to such contract.

Conclusion

Once the 2019 Arrangement comes into force, it is expected that cross-border recognition and enforcement of judgements could be faster and easier, saving litigation costs for parties in dispute. However, the date of commencement of the 2019 Arrangement is yet to be announced. At the moment, the provisions in the Choice of Court Arrangement remains the governing rules for recognition and enforcement of judgments across Hong Kong and Mainland China.

Should you have any queries regarding this article or any other questions relating to enforcement of judgment, our solicitors will be happy to assist you.

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