

New Arrangement for Reciprocal Recognition and Enforcement of Hong Kong and Mainland Chinese Judgments

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Introduction. On 29 January 2024, 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 “Arrangement”) will take effect in Hong Kong and Mainland China. The Arrangement will facilitate the mutual recognition and enforcement of most types of civil and commercial judgments between the two jurisdictions.

The Arrangement provides parties to Hong Kong and Mainland Chinese litigation with greater certainty that qualifying judgments will be recognized and enforced. It provides a comprehensive framework for the reciprocal recognition and enforcement of judgments concerning most civil and commercial matters. The Arrangement also enables the recognition of non-monetary judgments, which will permit judgment creditors to pursue enforcement of both injunctions and orders for specific performance. Simplified jurisdictional requirements under the Arrangement will also make it easier for Hong Kong judgment creditors to enforce against Mainland Chinese assets, and for Mainland Chinese judgment creditors to enforce against assets in Hong Kong.

Background to the Arrangement. The Arrangement is not the first time that Hong Kong and Mainland China have entered into agreements to facilitate mutual legal assistance in civil and commercial matters. There have been two prior reciprocal arrangements for the recognition and enforcement of judgments.

The first arrangement dates back to July 2006 and provided for the recognition and enforcement of judgments in civil and commercial matters pursuant to choice of court agreements made between the parties (the “Choice of Court Arrangement”). The second arrangement followed in June 2017 and concerned the reciprocal recognition and enforcement of civil judgments in matrimonial and family matters.

In Hong Kong, the Arrangement will be implemented by the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance (Cap. 645) (the “Ordinance”) and the Mainland Judgments in Civil and Commercial Matters (Reciprocal

Enforcement) Rules (the “Rules”). The Ordinance will supersede the current Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597 of the Laws of Hong Kong, “MJREO”). The Rules establish a streamlined mechanism to register and enforce Mainland Chinese judgments in Hong Kong.

In Mainland China, the Supreme People’s Court is expected to promulgate a judicial interpretation to implement the Arrangement.

Removal of the Choice of Court Requirement. The Arrangement is a welcome improvement over the existing Choice of Court Arrangement. The Choice of Court Arrangement provides that a judgment is only enforceable if parties have a written exclusive jurisdiction agreement in favour of the Mainland Chinese or Hong Kong courts. In practice, this has proven to be a barrier for judgment creditors where no such exclusive jurisdiction agreement exists. This requirement has limited the number of judgments which can be enforced pursuant to the Choice of Court Arrangement.

The Arrangement removes this barrier. Instead of producing a written exclusive jurisdiction agreement, parties will now only need to show that the original court in Mainland China or Hong Kong had a jurisdictional nexus to the proceedings. Relevant factors include proving either that the defendant’s place of residence, place of business or activities that gave rise to the proceedings in question were in the respective jurisdiction. Determining jurisdiction by reference to these factual enquiries represents a lower threshold for parties to satisfy. The effect of this is that a greater number of judgments will now be enforceable between the two jurisdictions.

This different jurisdictional threshold is likely to mean that asymmetric jurisdiction clauses are no longer an obstacle to accessing the reciprocal enforcement regime. Asymmetric jurisdiction clauses are common in international financing transactions. They allow one party to the contract (typically a bank) to choose where to bring proceedings, but restrict the other party (typically the borrower) to suing in only one specific jurisdiction. The existence of such clauses had proven to be problematic under the Choice of Court Arrangement where it had been determined that such clauses are not exclusive jurisdiction clauses.

Expanded Pool of Enforceable Judgments. The Arrangement expands the pool of judgments which may now be recognised and enforced. This is achieved by requiring that, subject to certain exclusions, a judgment is only required to be legally effective to fall within the scope of the Arrangement. This is based on the overriding principle that judgments which are legally enforceable in one jurisdiction should be eligible for recognition and enforcement in the other jurisdiction.

The key benefit of this approach is that judgments for most forms of non-monetary relief fall within the scope of the Arrangement. This means that injunctions, declaratory relief and orders for specific performance may be enforced. This was not possible under the Choice of Court Arrangement. However, interim relief does not fall within the scope of the Arrangement.

Judgments Excluded from the Arrangement. Certain judgments are expressly excluded under the Arrangement. In particular, judgments in relation to corporate insolvency and arbitration-related proceedings are excluded. Mutual recognition of and assistance to insolvency proceedings between the courts of Mainland China and Hong Kong is covered by a separate arrangement (see our earlier update [here](#)). The enforcement of arbitral awards issued in either jurisdiction is covered under the Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region. In addition, Mainland Chinese courts are empowered to issue interim measures in support of specific Hong Kong-seated arbitrations (see our earlier update [here](#)). Other types of excluded judgments include select categories of matrimonial and family cases, maritime cases and intellectual property cases. Judicial review cases and any other administrative cases heard by the Hong Kong courts are likewise excluded from the Arrangement.

Practical Ease of Enforcement. There are also measures in place under the Arrangement to enable the swift recognition and enforcement of judgments.

Where a party has obtained a Mainland Chinese court judgment, they may apply to the Court of First Instance in Hong Kong to register it. Once this has been done, the judgment can be enforced in the same manner as a Hong Kong court judgment.

Where a party is seeking to enforce a Hong Kong court judgment in Mainland China, they may first obtain a certified copy of the judgment and certificate from the respective Hong Kong court in order to aid the recognition and enforcement process.

Conclusion. The Arrangement is a welcome development and a further step in judicial cooperation between the courts of Mainland China and Hong Kong. We expect the Arrangement to be embraced by parties who may need to take enforcement action in Mainland China and for whom Hong Kong court proceedings may be a viable dispute resolution option. The Arrangement increases the attractiveness of pursuing litigation before the Hong Kong courts where enforcement action may be needed in Mainland China and the subject matter of the judgment falls within the scope of the Arrangement.

Please do not hesitate to contact us with any questions.



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