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New Law to Expand Reciprocal Recognition and Enforcement of Civil Judgments Between Mainland and Hong Kong

The new law is expected to overcome jurisdictional barriers and better promote business interactions in Mainland China and Hong Kong.

Key Points:

- Hong Kong recently passed a new law to enact a January 2019 arrangement ([2019 Arrangement](#)) to expand the scope of reciprocal recognition and enforcement of judgements between Mainland China and Hong Kong.
- Once the 2019 Arrangement becomes effective, monetary and non-monetary judgments in most civil and commercial disputes may be recognised and enforced between the two jurisdictions.
- Judgment creditors would be able to enforce their judgments against judgment debtors' assets located in both the Mainland and Hong Kong.

On 26 October 2022, the Hong Kong Legislative Council passed a significant and long-awaited [bill](#) to enact the [Mainland Judgments in Civil and Commercial Matters \(Reciprocal Enforcement\) Ordinance](#) (Ordinance). The Ordinance would give effect to the 2019 Arrangement signed by the Supreme People's Court of the People's Republic of China (SPC) and the Department of Justice of Hong Kong, and would supersede the current enforcement arrangement (2008 Arrangement) under the [Mainland Judgments \(Reciprocal Enforcement\) Ordinance](#) (Cap. 597) (MJREO).

After the Ordinance comes into effect in Hong Kong, the SPC will release a new judicial interpretation that will replace the interpretation issued in 2008 (Fa Shi [2008] No. 9) (2008 Interpretation).

This Client Alert recaps the major changes in the reciprocal recognition and enforcement of judgments in the Mainland and Hong Kong under the 2019 Arrangement. It also discusses how the 2019 Arrangement will impact the landscape for commercial and civil disputes in these jurisdictions.

New Features of the 2019 Arrangement

The 2019 Arrangement aims to save legal costs and judicial resources in both the Mainland and Hong Kong by reducing the need for parallel civil litigations in the two jurisdictions. It would establish a comprehensive and single regional judicial assistance system by expanding the scope of judgments that

can be reciprocally recognised and enforced in the Mainland and Hong Kong. The 2019 Arrangement will therefore remove or update the following requirements under the MJREO and the 2008 Interpretation.

1. Removal of Exclusive Choice of Court Arrangement

Under the 2008 Arrangement, judgments are reciprocally enforceable only if the parties agreed to the exclusive jurisdiction of certain designated courts in the Mainland and Hong Kong in the underlying contract giving rise to the dispute. The 2019 Arrangement would discard this rule.

An applicant seeking to enforce judgment under the 2019 Arrangement would only have to show that:

- the underlying dispute is not subject to the exclusive court jurisdiction of the requested place (i.e., the place where the judgment is sought to be recognised and enforced), and that
- a connection between the dispute and the requesting place (i.e., the place issuing the original judgment) exists, in order to prove that the original court has jurisdiction for the purpose of the 2019 Arrangement. The connection between the dispute and the requesting place may be based on:
 - the defendant’s place of residence,
 - the place of the defendant’s business,
 - the place of performance of the disputed contract,
 - the place of commission of the infringing act of a tort, or
 - any actual connection between the dispute and the requesting place, for example where the contract was performed or signed, or where the subject matter was situated etc. Notably, according to 2019 Arrangement and the SPC, choice of a designated court per se would suffice as a connection between the dispute and the requesting place for reciprocal enforcement, unless the place of residence of all parties was in the requested place.

2. Expansion of Subject Matters Covered

Under the 2019 Arrangement, more judgments would become eligible for reciprocal recognition and enforcement. Compared to the 2008 Arrangement which only applies to judgments arising from contractual disputes, the 2019 Arrangement would cover judgments regarding almost all matters of a “civil and commercial” nature under both Hong Kong and the People’s Republic of China (PRC) laws, unless expressly excluded. Excluded matters include:

- arbitration-related matters, i.e., the validity of an arbitration agreement and the setting aside of an arbitral award;
- corporate insolvency, debt restructuring, and personal bankruptcy, unless otherwise provided in other arrangements;
- non-judicial proceedings and judicial proceedings relating to administrative or regulatory matters, including administrative litigations in the Mainland and judicial reviews in Hong Kong; and
- certain intellectual property matters, e.g., validity of intellectual property rights, infringement of inventions and utility models, determination of the FRAND royalty rates of Standard Essential Patents

(SEPs), and infringements of standard patents (including “original grant” patents) and short-term patents.

3. Expansion of Categories of Enforceable Relief

Under the 2019 Arrangement, rulings other than judgments can be recognised and enforced. Judgments, rulings, conciliatory statements, and orders of payment from the Mainland courts may be enforced in Hong Kong. Judgments, orders, decrees, and allocators from courts at the district court level or above, as well as the Competition Tribunal, the Lands Tribunal, the Labour Tribunal, and the Small Claims Tribunal of Hong Kong may be enforced in the Mainland.

The 2019 Arrangement would cover rulings on both monetary (excluding exemplary or punitive damages except in intellectual property and unfair competition matters) and non-monetary relief, e.g., declaratory relief and orders for specific performance.

The 2019 Arrangement still provides for certain exclusions from reciprocal recognition and enforcement, such as preservation measures ruled in the Mainland and anti-suit injunction and orders for interim relief in Hong Kong. However, interim measures are available to arbitrations seated in the other region pursuant to the separate interim measure arrangement.

In addition, compared to the 2008 Arrangement that requires the judgments to be “final” and “enforceable”, the 2019 Arrangement would only require judgments to be “legally effective” given the difficulty of determining whether a Mainland judgment is “final” (as in theory all Mainland judgments are subject to trial supervision procedures and therefore not “final”).

4. Grounds for a Court’s Refusal to Recognise and Enforce a Judgment

Compared to the 2008 Arrangement, the 2019 Arrangement provides new grounds for a court of the requested place to refuse to recognise or enforce a judgment. Some of these grounds include the following:

- The original court lacks jurisdiction (for the purposes of the 2019 Arrangement) to rule over the dispute.
- The judgment was rendered in an action which was accepted by the original court after a court of the requested place has already accepted an action on the same dispute.
- Recognition and enforcement would be manifestly contrary to the basic principles of the law of the requested place.

Application Procedures

Applications for enforcement of Hong Kong judgments in the Mainland would need to be filed with the Intermediate People’s Court in the place of residence of the applicant or the respondent, or where the property of the respondent is located. Applications for enforcement of Mainland judgments in Hong Kong need to be filed with the High Court of Hong Kong.

Applications should be filed with a copy of the judgment, a certificate issued by the original court certifying the judgment, and identity documents of the applicant. For default judgments, the court may further require documentation to prove proper service of process against the defaulting party.

Next Steps

Following the enactment of the Ordinance, the chief judge of the High Court will issue rules governing the relevant practice and procedures. The SPC will also promulgate a judicial interpretation to validate the 2019 Arrangement.

After the rules and the judicial interpretation have been prepared, the Department of Justice in Hong Kong will liaise with the SPC regarding the date when the 2019 Arrangement will take effect in both places simultaneously.

The 2019 Arrangement would apply to judgments made on or after the date when the 2019 Arrangement takes effect, so that judgment creditors can effectively enforce their judgments against the other party's assets in both regions. The 2019 Arrangement would likely break the jurisdictional barriers and better promote business interactions in both the Mainland and Hong Kong.

Before the 2019 Arrangement takes effect, judgments arising from contracts with exclusive choice of court agreements can still be reciprocally recognised and enforced in the Mainland and Hong Kong under the 2008 Arrangement.

Comment

Judgment creditors with judgments rendered after the effective date of the 2019 Arrangement would be able to enforce their judgments against judgment debtors' assets located in both the Mainland and Hong Kong.

Parties anticipating upcoming legal actions would have greater flexibility in deciding where to pursue legal actions, given that judgments issued in Hong Kong may be more conveniently recognised in the Mainland (and vice versa) without the need of re-litigation.

Parties who are drafting commercial agreements and might need to enforce judgments in Hong Kong and the Mainland, would enjoy more flexibility in selecting dispute resolution jurisdictions in their commercial and civil contracts, due to the removal of the exclusive choice of court arrangement. In particular, parties may adopt asymmetric jurisdiction clauses in their contracts while retaining the flexibility in enforcing judgments in Hong Kong and the Mainland. Asymmetric jurisdiction clauses are quite common in international financing transactions, which allow one party to the contract (usually the lender) to sue another party in any jurisdiction, but restrict another party (usually the borrower) to sue in only one exclusive jurisdiction. Judgments arising out of contracts with asymmetric clauses may be reciprocally recognised and enforced under the 2019 Arrangement.

Stakeholders may want to revisit their dispute resolution clauses in contracts that may involve a party domiciled or located in Hong Kong and/or the Mainland, or otherwise have some nexus to Hong Kong and/or the Mainland, and seek advice on the appropriate forum before commencing legal action. Latham & Watkins will closely monitor any updates regarding the detailed implementation rules and arrangements.

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