

## HONG KONG PASSES LEGISLATION TO IMPLEMENT NEW MAINLAND-HONG KONG ARRANGEMENT FOR RECIPROCAL ENFORCEMENT OF CIVIL COURT JUDGMENTS

The Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance was passed on 26 October 2022. It gives effect to a Mainland-Hong Kong arrangement signed in 2019, which supersedes an arrangement signed in 2006. The government has indicated that the Ordinance will come into effect in about six to seven months. The Ordinance will enable Mainland court judgments to be enforced in Hong Kong, as if they were Hong Kong court judgments, by way of a simple registration procedure with jurisdiction established by a connection to the Mainland. Currently, only Mainland judgments providing for monetary relief may be so enforced and only if made pursuant to exclusive jurisdiction agreements in favour of the Mainland courts – these limitations will be removed under the Ordinance. The broadened enforceability of Mainland judgments in Hong Kong (and vice versa) will be an important factor in drafting the dispute resolution provisions in commercial contracts.

### INTRODUCTION

The Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance (the "**Ordinance**") was passed on 26 October 2022. The date of operation is yet to be announced, but the government has indicated this should be in about six to seven months. This is to allow for the Hong Kong legislature to make the necessary court rules and for the corresponding Supreme People's Court judicial interpretation relating to the 2019 Arrangement (defined below) to be promulgated.

The Ordinance gives effect to 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*" signed on 18 January 2019 (the "**2019 Arrangement**"), the text of which can be found [here](#).

#### Key issues

- The 2019 Arrangement, once in effect, will supersede the existing arrangement for reciprocal enforcement of civil court judgments.
- The 2019 Arrangement provides for a broader range of Mainland judgments to be enforceable in Hong Kong (as compared to the 2006 Arrangement) by way of a simple registration procedure.
- The 2019 Arrangement extends to judgments providing for non-monetary relief.
- An exclusive jurisdiction agreement in favour of the Mainland courts will no longer be a prerequisite, only a connection to the Mainland.
- Certain matters such as insolvency matters are excluded, as well as judgments for certain relief such as interim relief.
- The 2019 Arrangement does not affect enforcement of arbitral awards which is dealt with under a separate regime.

The 2019 Arrangement supersedes the ‘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 Pursuant to Choice of Court Agreements between Parties Concerned (the “**2006 Arrangement**”), which is implemented by the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) (“**MJREO**”), which respectively can be found [here](#) and [here](#).

In summary, the 2019 Arrangement will enable a broader range of Mainland court judgments to be enforced in Hong Kong by way of a simple registration procedure as if they are judgments given in the Court of First Instance (CFI), and vice versa with respect to enforcement of Hong Kong judgments in the Mainland. The registration procedure means there is no need to rely on the common law and commence a new action in Hong Kong based on the Mainland judgment to enforce the same.

## **OTHER MAINLAND-HONG KONG ARRANGEMENTS**

The 2019 Arrangement can be seen in the context of other Mainland-Hong Kong reciprocal enforcement and mutual assistance arrangements. These include:

<b>Type of judgment or award</b>	<b>Regime</b>
<b>Court</b>	
Civil judgments	<a href="#">Arrangement</a> signed on 18 January 2019 and implementing this, the Ordinance to which this briefing relates
Insolvency proceedings	<a href="#">Record of Meeting</a> signed on 14 May 2021, see CC briefing <a href="#">here</a>
Matrimonial cases	<a href="#">Arrangement</a> signed on 20 June 2017 and implementing this, <a href="#">Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement Ordinance (Cap. 639))</a>
<b>Arbitration</b>	
Arbitral awards	<a href="#">Arrangement</a> signed on 12 June 1999, <a href="#">Supplemental Arrangement</a> signed on 27 November 2020 and implementing this, <a href="#">Arbitration Ordinance (Cap. 609)</a>
Interim measures	<a href="#">Arrangement</a> signed on 2 April 2019, see CC briefing <a href="#">here</a>

## **COVERAGE**

The Ordinance covers the following types of Mainland judgments:

- judgments enforceable in the Mainland and made in proceedings that are civil or commercial in nature, such nature to be determined in accordance with Mainland law;
- judgments providing for monetary or non-monetary relief, including interest due under the judgment up to the time of registration and costs as duly certified by the court issuing the judgment; and

- judgments for payment of sums of money in respect of compensation or damages awarded in criminal proceedings.

The Ordinance does not cover the following types of Mainland judgments:

- corporate and individual insolvency, bankruptcy and compromise matters;
- succession and administration or distribution of estate matters;
- certain matrimonial and family cases;
- certain intellectual property cases and rulings;
- certain maritime matters;
- interim measures;
- punitive or exemplary damages other than those awarded in certain intellectual property proceedings.

## JURISDICTION

Under the 2006 Arrangement, jurisdiction for enforcement of Mainland judgments in Hong Kong is established solely by a written agreement in favour of the exclusive jurisdiction of the Mainland courts.

Under the 2019 Arrangement, jurisdiction will be established by a connection with the Mainland at the time when the proceedings were brought / accepted. This connection may consist of (i) the defendant's place of residence; (ii) the defendant's representative office, branch, office, place of business or other establishment; (iii) the place of performance of the disputed contract; (iv) the place of commission of the alleged tort; or (v) a written exclusive or non-exclusive jurisdiction agreement in favour of the Mainland courts accompanied by, if the place of residence of all the parties is in Hong Kong, a connection between the dispute and the Mainland.

## APPLICABILITY OF 2006 AND 2019 ARRANGEMENTS

Application to the Hong Kong Court of First Instance for registration of a Mainland judgment may only be made in respect of judgments handed down on or after the commencement date of the Ordinance. The default in complying with the relevant Mainland judgment must have occurred within 2 years before the date of the application, in other words, there is in effect a two-year limitation period.

The 2006 Arrangement and MJREO will continue to apply to Mainland judgments given pursuant to written exclusive jurisdiction agreements in favour of the Mainland courts made before the commencement date of the Ordinance.

## PROCEDURE UNDER THE 2006 AND 2019 ARRANGEMENTS

An application for registration of a Mainland judgment is normally dealt with *ex parte*, without the involvement of the judgment debtor. Once the application is granted, a notice of registration must be served on the debtor.

The judgment debtor may then contest the registration by applying to set aside the same within 14 days (the period may otherwise be prescribed or extended) on limited mandatory and discretionary grounds, which relate to jurisdiction, procedural fairness, and public policy. (Under the 2006 Arrangement, the

period for set aside was not fixed at 14 days, but was to be prescribed by the court when making the order for registration.)

If the Mainland judgment is appealed or the case retried, the judgment debtor may apply to set aside the registration or adjourn the setting aside application pending appeal or retrial. The judgment creditor may only take action to enforce after the expiry of the period for applying to set aside or disposal of any set aside application.

Both the 2006 Arrangement and 2019 Arrangement expressly provide that before or after accepting an application for enforcement of a judgment, the enforcing Hong Kong (or Mainland) court may order property preservation, or other appropriate injunctions or measures, to prevent dissipation of assets in accordance with local law.

## **PREVENTING DUPLICATIVE PROCEEDINGS IN MAINLAND AND HONG KONG**

The Ordinance contains mechanisms for preventing duplicative proceedings as follows:

- A Mainland judgment is to be recognised in Hong Kong as conclusive in respect of the same cause of action between the same parties and may be relied upon by way of defence or counterclaim.
- Pending Hong Kong proceedings in respect of the same cause of action between the same parties must be stayed if an application for registration of a corresponding Mainland judgment is made.
- Proceedings in respect of the same cause of action between the same parties may not be brought in Hong Kong if a corresponding Mainland judgment is registered or a registration application is pending.

## **ENFORCEMENT OF HONG KONG JUDGMENTS IN THE MAINLAND**

The scope of Hong Kong judgments enforceable in the Mainland has now been extended to include those issued by the Competition Tribunal, Lands Tribunal and Labour Tribunal, but not those given in proceedings for judicial review or arising directly out of the exercise of administrative power.

Pursuant to the 2019 Agreement, applications for enforcement of Hong Kong judgments in the Mainland are to be filed with the Intermediate People's Court in the place of residence of the applicant or respondent or where the property of the respondent is located. To facilitate such enforcement, the Ordinance provides for the obtaining of a certified copy of the Hong Kong judgment to be enforced, and for the Hong Kong court to issue of a certificate certifying the effectiveness of the Hong Kong judgment.

## **CONCLUSION**

The long-awaited broadening of the Mainland-Hong Kong regime for reciprocal enforcement of civil court judgments is welcomed. This extends a simple and less costly registration procedure to (i) jurisdiction based on a connection with the Mainland or Hong Kong, without strict requirement for an exclusive jurisdiction agreement in favour of the Mainland or Hong Kong courts (ii) judgments providing for non-monetary relief, and (iii) judgments issued by additional courts including the tribunals listed above.

Whilst certain judgments are excluded from the 2019 Arrangement such as those involving insolvency matters and certain matrimonial cases, there are other Mainland-Hong Kong arrangements which cover these judgments.

The Ordinance has also made provision to reduce duplicative proceedings in the Mainland and Hong Kong, specifically where they involve the same cause of action between the same parties.

The passing of the Ordinance strengthens Hong Kong's position as a uniquely advantageous dispute resolution venue where onshore projects or parties based in the Mainland are involved. The Ordinance adds to Hong Kong's supportive legal framework which already includes arrangements for enforcement of arbitral awards and interim relief in support of Mainland arbitral proceedings. Should you require assistance in reviewing dispute resolution agreements in contracts or enforcing Mainland judgments or arbitral awards in Hong Kong or vice versa, please contact our Dispute Resolution teams in Hong Kong and the Mainland.

## 2006 and 2019 Arrangements Compared

	<b>2006 Arrangement / MJREO (Cap. 597)</b>	<b>2019 Arrangement / the Ordinance</b>
Requirement for exclusive jurisdiction agreement in favour of Mainland courts	Yes	No. Only a connection with the Mainland such as place of residence, business or performance of disputed contract is required
Which arrangement applies?	Exclusive jurisdiction agreement made before the commencement date of the Ordinance	Judgments given on or after the commencement date of the Ordinance (however, where the exclusive jurisdiction agreement was made before the commencement date of the Ordinance, the 2006 Arrangement applies)
Type of matter	Contractual disputes other than those arising from: <ul style="list-style-type: none"> <li>• employment contracts</li> <li>• contracts to which a natural person acts for personal consumption, family or other non-commercial purposes</li> </ul>	Not limited to contractual disputes, but these matters are expressly excluded: <ul style="list-style-type: none"> <li>• corporate and individual insolvency, bankruptcy and compromise matters as specified in the Ordinance;</li> <li>• succession and administration or distribution of estate matters;</li> <li>• certain defined matrimonial and family cases;</li> <li>• certain defined intellectual property cases and rulings;</li> <li>• certain listed maritime matters</li> </ul>
Monetary versus non-monetary relief	Monetary relief only	Monetary and non-monetary relief
Interim measures	N/A	N/A
Applicability to criminal judgments	N/A	Judgments for payment of sums of money in respect of compensation or damages awarded in criminal proceedings
Courts	In specified circumstances: <ul style="list-style-type: none"> <li>• The Supreme People's Court</li> </ul>	Same as 2006 Arrangement but Basic People's Courts no longer need to be specifically designated

**C L I F F O R D**  
**C H A N C E**

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	<ul style="list-style-type: none"><li>• A Higher People's Court</li><li>• An Intermediate People's Court</li><li>• A designated Basic People's Court</li></ul>	
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