

Mutual legal assistance between the Mainland and Hong Kong and the enforcement of civil and commercial judgments

In July 2006, the arrangement on reciprocal recognition and enforcement of judgments in civil and commercial matters pursuant to choice of court agreements made between the parties concerned was signed (“**the Choice of Court Arrangement**”) between the Supreme People’s Court and the HKSAR Government. Amendments to this arrangement were made in February 2008 to reflect the new provisions in the amended Civil Procedure Law of the Mainland. The Choice of Court Arrangement covers money judgments given by a designated court of either the Mainland or the HKSAR exercising its jurisdiction in business-to-business agreements where the parties concerned have agreed in writing to designate a people’s court of the Mainland or a court of the HKSAR as the forum to have sole jurisdiction for resolving such disputes.

To give effect to the Choice of Court Arrangement, the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) was enacted in August 2008 and came into effect on 1 August 2008.

On 18 January 2019, the Supreme People’s Court and the HKSAR Government signed a new arrangement (“**the New Arrangement**”) which seeks to establish a bilateral legal mechanism and to provide greater clarity and certainty in relation to the recognition and enforcement of judgments, as well as widening the range of civil and commercial matters which may benefit from the New Arrangement.

The New Arrangement eliminates the need for the contracting parties to agree on the choice of court for bringing a claim or to designate a court as having sole jurisdiction for resolving disputes. Although this element is still somewhat regulated, it is simply limited to providing a jurisdictional basis for the judgment between the dispute and the place where the judgment is given. This can be achieved in various ways, such as the place of performance of the contract is the place where the judgment is given or the defendant’s place of residence is the place where the judgment is given.

In addition to the above, a main change provided in the New Arrangement is that it will be covering both monetary and non-monetary judgments in civil and commercial matters in nature under both Hong Kong and Mainland Law. This substantially changes the current position whereby only monetary judgments are covered. However, certain civil and commercial matters are still not covered by the New Arrangement, and they include but are not limited to the following:

- Decrees of judicial separation made by the Courts of Hong Kong and certain family-related maintenance disputes heard by the Mainland Courts;
- Judgments in matrimonial or family matters (which are covered under a separate arrangement);
- Corporate insolvency and debt restructuring as well as personal insolvency;
- Cases relating to succession, administration or distribution of the estate of a deceased person;
- Tortious claims for infringement of invention patents and utility models in the Mainland, standard patents or short term patents in Hong Kong;
- Judgments on the validity of an arbitration agreement and the setting aside of an arbitral award; and
- Judgments on the legal incapacity of a natural person for civil acts.

We would like to highlight that the New Arrangement also sets out jurisdictional grounds for the purpose of recognition and enforcement as well as grounds for refusal of recognition and enforcement.

The New Arrangement will be implemented by local legislation in Hong Kong on a date which is yet to be announced. It will take effect after both places have completed the necessary procedures to enable implementation and will apply to judgments made on or after the commencement date.

Given the different judicial systems in the Mainland and Hong Kong, the signing of the New Arrangement will be welcomed by businesses with cross-border operations as it will provide greater certainty and better protection to the parties involved. The New Arrangement will, upon its commencement, supersede the Choice of Court Arrangement.

Please note that the above is simply an overview of the subject matter and it is not, nor is it intended to be, a legal opinion or legal advice. Should you have any questions concerning the new law's requirements set out above or should you wish to receive information on our annual package, please do not hesitate to contact us.

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