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New Mainland-Hong Kong Arrangement for Reciprocal Enforcement of Civil and Commercial Judgments

On 26 October 2022, Hong Kong's Legislative Council passed the *Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance* (the "**Ordinance**"). The Ordinance implements 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" which was signed on 18 January 2019 ("**2019 Arrangement**") between the Hong Kong SAR Government and China's Central Government. The 2019 Arrangement supersedes the pre-existing "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" that came into force in 2006 and was implemented by the *Mainland Judgments (Reciprocal Enforcement) Ordinance* (Cap. 597) ("**MJREO**").

The Ordinance will expand the scope of judgments granted by the Mainland courts that will be recognized and enforced in Hong Kong. Compared with the MJREO, which only covers certain commercial contractual disputes, the Ordinance encompasses both monetary and non-monetary Judgments in civil and commercial matters, as well as compensation or damages awarded in criminal proceedings. Nevertheless, certain types of Judgments are excluded from enforcement, such as Judgments relating to corporate insolvency, personal bankruptcy and administration of estates, etc.

Furthermore, for parties to establish jurisdiction for a Mainland Judgment to be enforced in Hong Kong, they no longer need to have a written agreement to that effect. As the 2019 Arrangement envisions, jurisdiction will be established merely by having a connection with the Mainland at the time when the proceedings were brought or accepted.

The new regime provides a simpler and more streamlined registration procedure, as opposed to its predecessor. For monetary Judgments, an application for registration can be made on the date specified for payment in the Judgment, or the date on which the Judgment becomes effective in the Mainland; for non-monetary Judgments ordering a prohibition, restriction or the performance of an act, an application for registration can be made with effect from the date upon which the non-compliance first occurs. The registration procedure means it is no longer necessary for parties to rely on the common law and commence a new action in Hong Kong based on the Mainland judgment in order to enforce it.

Another salient objective of the 2019 Arrangement is reducing re-litigation of the same disputes. It achieves this by staying all ongoing Hong Kong proceedings in relation to the same cause of action – once an application for registration has been made in respect of a Mainland Judgment during the pendency of that application – and by prohibiting parties from commencing any new Hong Kong proceedings under the same cause of action.

In summary, the 2019 Arrangement establishes a more comprehensive yet simpler mechanism for reciprocal recognition and enforcement of Judgments in civil and commercial matters between Hong Kong and the Mainland, and should prove to be a significant jurisprudential development between Hong Kong and the Mainland. Since it applies to a broader range of enforceable Judgments and abolishes the need for an exclusive jurisdiction clause in the underlying agreement, parties' interests will be better protected. Furthermore, the new framework enhances Hong Kong's competitiveness as a dispute resolution venue by offering an alternative further option for parties involved in transactions with Mainland counterparties and reducing duplicative proceedings in both places.

The Ordinance will come into force in both Hong Kong and Mainland once all the necessary mechanisms in both jurisdictions are established and will apply to all Judgments made on or after the commencement date of the same. Until then, the MJREO will continue to apply.

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