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Simplified reciprocal enforcement of Mainland Judgments comes into effect in Hong Kong

The long awaited *Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance Cap. 645* (the “**Ordinance**”) came into force on 29 January 2024, ushering in a new era of judicial cooperation between Hong Kong and mainland China.

Background

Arrangements for permitting reciprocal recognition and enforcement of civil and commercial judgments between courts in Hong Kong and in the mainland have existed since August 2008. However, these only recognized and permitted enforcement of judgments issued pursuant to an exclusive jurisdiction clause so most parties needed to essentially re-litigate to enforce judgments issued on the opposite side of the Hong Kong-mainland China border.

On 18 January 2019, the Hong Kong government and the mainland’s Supreme People’s Court reached a historic milestone by signing the *Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters between the Courts of the Mainland and of the Hong Kong Special Administrative Region* (“**Arrangement**”).

This was followed, on 26 October 2022, with Hong Kong’s Legislative Council passing the Ordinance and the Hong Kong government gazetting the *Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Rules* (the “**Rules**”) on 10 November 2023, the same day it was announced that the Rules and the Ordinance would both come into force on 29 January 2024.

Meanwhile, the new regime came into effect in mainland China with the Supreme People’s Court’s issuing a judicial interpretation on the same day.

Key Changes

1. Abolition of the Exclusive Jurisdiction Requirement

The pre-existing regime required judgment creditors to show that the parties, in their underlying contract, agreed to submit to the exclusive jurisdiction of the courts either in mainland China or Hong Kong. That requirement is now abolished. Instead, the judgment creditor merely needs to show the Hong Kong Court of First Instance (the “**Court**”) how the original proceedings had a sufficient connection with mainland China. Relevant factors include the defendant having a residence or place of business in mainland China at the time of the mainland court proceedings, and/or proceedings brought in relation to a contract that is performed or tortious acts committed in mainland China. Such judgments are defined in the Ordinance as “**Mainland Judgments**”.

In other words, any Mainland Judgment issued on or after 29 January 2024 is now enforceable in Hong Kong simply by the judgment creditor applying to the Court for a registration order to register the judgment.

2. Expanded Categories of Judgments Enforceable in Hong Kong

Under the pre-existing regime, the recognition and enforcement of judgments was limited to monetary judgments given by courts in mainland China or Hong Kong in commercial disputes. The Arrangement expands this to include both monetary and non-monetary judgments that are civil and commercial in nature as well as certain intellectual property judgments and judgments for damages arising from criminal proceedings. However, this expanded scope of categories is subject to the following list of exclusions in the Ordinance:

- bankruptcy/insolvency cases
- debt restructuring cases
- estate succession matters
- matrimonial cases
- setting aside an arbitral award
- interim relief
- anti-suit injunctions
- some intellectual property matters
- proceedings to confirm the validity of an arbitration agreement

Two-way enforcement of judgments in matrimonial and insolvency cases is provided for under separate arrangements agreed between the Hong Kong government and the mainland's Supreme People's Court in 2022 and 2021 respectively.

3. Expanded Range of Courts

Lastly, the Ordinance also expands the range of courts and tribunals whose judgments are covered under the new regime. Judgments issued in Hong Kong by the Competition Tribunal, Lands Tribunal and Labour Tribunal are now also enforceable and in mainland China, enforceable Mainland Judgments are no longer limited to those issued by specially designated courts.

Expected Impact

The new regime has come into force at a time of unprecedented integration between the Hong Kong and mainland China legal systems. As mentioned above, arrangements for two-way enforcement of matrimonial and insolvency judgments have been in place for a few years and a string of mainland insolvency judgments (e.g. *Re CEFC Shanghai and Re Shenzhen Everich*) have already been enforced in Hong Kong. The consensus is that the new regime is more efficient, it provides for greater certainty and since it is no longer necessary to re-litigate judgments in most cases, it should, in principle, significantly reduce the cost of litigating.

However, it remains to be seen whether courts in mainland China will enforce judgments even in more controversial cases such the recent winding up order made in relation to mainland property developer China Evergrande Group. Cases like this will be the first major challenge to the new regime. If People's Intermediate Courts in the mainland consistently enforce judgments in appropriate cases, it will enhance Hong Kong's reputation and role as a regional centre for dispute resolution, particularly with regard to mainland China-related disputes. Otherwise, it will be a grave setback for the regime and undermine judicial certainty.

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If you need legal advice concerning any of the issues mentioned in this article or about other issues or circumstances, please contact:

Davide De Rosa
Managing Partner of Hong Kong Office

Corporate/M&A

Hong Kong
+852 21563494
dderosa@gop.it

Selma Masood
Principal of SM & Co in Hong Kong

Hong Kong
+852 21563496
smasood@masood-hk.com

Richard Grams
Counsel of SM & Co in Hong Kong

Hong Kong
+852 21563497
rgramsHK@masood-hk.com



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