

# New Reciprocal Enforcement Arrangement

Yu, Chan & Yeung Solicitors

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## Long-awaited Arrangement

The Supreme People's Court of the People's Republic of China (the “**Supreme People's Court**”) and the Department of Justice had signed 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” (the “**2019 Arrangement**”) on 18<sup>th</sup> January 2019. To give effect to the 2019 Arrangement in Hong Kong, the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance (Cap. 645 of the Laws of Hong Kong) (the “**New Ordinance**”) shall come into effect on 29<sup>th</sup> January 2024. Once registered, the registrable judgments will become enforceable under the New Ordinance. The New Ordinance is long-awaited enactment and its implementation is expected to spark a huge wave of reciprocal enforcements of judgements in the PRC and Hong Kong.



This article is written with intent to provide a concise overview of the key features of the 2019 Arrangement and the New Ordinance. In particular, it will explore how the 2019 Arrangement streamlines the requirements and procedures of the reciprocal registration and enforcement of judgments in civil and commercial matters between the PRC and Hong Kong.

## Takeaways of the New Ordinance

The takeaways of the New Ordinance are set out below.

### **1. Dispensation of exclusive jurisdiction clause**

Under the New Ordinance, the requirement that an exclusive jurisdiction clause be provided in the agreement underlying the registrable judgement for enforcement is dispensed with. Prior to the New Ordinance, it is required for the underlying agreement to explicitly state that either the PRC or Hong Kong courts shall have exclusive jurisdiction over the dispute of the underlying agreement. However, it is worth noting that the parties will, in practice, prefer to agree on a non-exclusive jurisdiction clause under the underlying agreement to provide the parties with optional jurisdictions to commence the legal proceedings for adjudication of the dispute. Thus, the exclusive jurisdiction clause requirement had hindered the parties from reciprocally enforcing the judgements indeed. By virtue of the dispensation of exclusive jurisdiction clause requirement, it is expected that the volume and size of the cases to reciprocally enforce judgements in the PRC and Hong Kong will be sharply increased.



## **2. The extension of scope of registrable judgments**

In the first place, the Hong Kong court's Judgments, which are registrable for enforcement in the PRC pursuant to the provision of the New Ordinance, are extended to include a judgment, order, decree, allocatur, or certificate of fixed costs given or made by the Hong Kong courts as specified under the New Ordinance provided that an order for interim relief or an antisuit injunction is not registrable for enforcement in PRC.

Secondly, the scope of the PRC Judgments, which are registrable in Hong Kong for enforcement, is enlarged and will include a judgment, ruling, conciliatory statement or order of payment given or made by the specified courts in the PRC under the New Ordinance provided however that a ruling given in respect of an interim measure is excluded.

In addition, judgments that fall within a civil and commercial nature under the Hong Kong or the PRC law, or judgments of a criminal nature which includes an order for the payment of a specific monetary amount as compensation under the Hong Kong or the PRC law are deemed registrable for enforcement.

## **3. Expansion of specified courts**

The scope of specified courts in the PRC and Hong Kong has been expanded by the New Ordinance. It would now include all courts in the PRC, whereas the Hong Kong courts are expanded to include the tribunals, namely:-

- (a) the Competition Tribunal;
- (b) the Lands Tribunal;
- (c) the Labour Tribunal; and
- (d) the Small Claims Tribunal.

## **4. Judgements excluded from registration**

It should however note that some judgements are excluded and not registrable under the New Ordinance, such as judgments pertaining to matrimonial or family matters, the succession, administration or distribution of the estate of the deceased.

## Implementation Procedures

Albeit the PRC and Hong Kong have reached the 2019 Arrangement, it only acts as a mutually general regulation of the reciprocal enforcement and the procedures and practices to register and enforce judgments are required to be put in place by way of the local laws.

Applications for registration in Hong Kong of the PRC judgements: With respect to application procedures for registration of the PRC judgements in Hong Kong, it is established in the New Ordinance.

Under the New Ordinance, the applicant shall make an application for registration of the PRC judgments in civil or commercial matters to the Court of First Instance of the High Court of Hong Kong (the **“High Court of Hong Kong”**) together with an affidavit or affirmation exhibiting supporting documents which include, among others, (i) a sealed copy of the PRC Judgment; and (ii) a certificate issued by the specified PRC court certifying that the judgment concerns civil or commercial matter and is effective in the PRC.



Where the requirements for registration of the PRC judgement are met, the High Court of Hong Kong shall grant a registration order. Thereafter, the applicant is required to serve a notice of registration setting out the full particulars of the registration order and time limit for application to set aside it on all potential respondents. Upon the expiry of time limit to set aside, or the application to set aside having been dismissed (as the case may be), the High Court of Hong Kong shall render the PRC judgement as enforceable as if it were a judgment originally given by the High Court of Hong Kong on the day of registration.

*Applications for registration in the PRC of Hong Kong Judgments:* In relation to the registration applications in the PRC of the Hong Kong judgments, the Supreme People's Court has finally promulgated judicial interpretation giving effect to the 2019 Arrangement on 25 January 2024 (the "**Judicial Interpretation**").

Pursuant to the Judicial Interpretation, the applicant shall make an application for recognition and enforcement of the Hong Kong judgments in civil or commercial matters to an Intermediate People's Court (the "**Intermediate PRC Court**") of the place of residence of the applicant or the respondent, or the place where the property of the respondent is located, and is required to submit the following documents in support: -

- (a) An application;
- (b) A copy of the legally effective judgment affixed with the seal of specified HK court which gave the judgment;
- (c) A certificate issued by the specified HK court certifying that the judgment is effective and could be enforceable in the requesting place (i.e., HK);
- (d) In the event that the HK judgment is a default judgment, documents certifying that the parties concerned have been legally summoned, unless the HK judgment expressly states the same or the application is applied for by the absent party; and
- (e) Documents of identity.

And documents submitted for the purposes of recognition and enforcement of the HK judgments to the Intermediate PRC Court not in Chinese language shall submit together with an accurate Chinese translation.

## Way Forward

With the upcoming commencement of the 2019 Arrangement and the New Ordinance, the PRC and Hong Kong judgments made on or after the commencement date may be registrable and enforceable reciprocally and it builds up a much more flexible and convenient judicial cooperation platform between these two jurisdictions.

As with other ordinances in Hong Kong, it is noticed that the New Ordinance will not have a retrospective effect and does not apply to judgements which were handed down prior to its commencement date, that is to say, the Mainland Judgments (Reciprocal Enforcement) (Cap. 597 of the Laws of Hong Kong) will continue to apply to the judgments made prior to the commencement date of the New Ordinance.

Undoubtedly, the New Ordinance will strengthen the competitiveness of Hong Kong as a regional dispute resolution centre following operation of the New Ordinance which provides more comprehensive justice safeguard.

