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New Opportunities for The Enforcement of Hong Kong Judgments in the Mainland and Mainland Judgments in Hong Kong



Introduction

Coming into force shortly on 29 January 2024 is the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance (Cap 645) ("**Ordinance**") and rules which make provisions for the enforcement in Hong Kong of civil and commercial judgments of the Mainland¹ ("**Mainland Judgments**") and for facilitating the recognition and enforcement in the Mainland of Hong Kong judgments ("**Hong Kong Judgments**"). The Ordinance and its rules put the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and Hong Kong dated 18 January 2019 ("**Arrangement**") into effect in Hong Kong.

Many important benefits will be achieved, including allowing for the enforcement in the Mainland of Hong Kong Judgments, or in Hong Kong of Mainland Judgments, which in both cases is currently limited and difficult, as well as enhancing the credentials of Hong Kong, the only common law jurisdiction in the People's Republic of China, as a dispute resolution venue.

¹ Defined in the Ordinance as China other than Macau, Hong Kong or Taiwan.

What does the Ordinance cover?

The Ordinance states that it applies to Mainland Judgments defining them as those that are: (i) given in proceedings that are civil and commercial in nature; or (ii) given in Mainland criminal proceedings with orders for compensation from a party; and (iii) not an excluded judgment (see further below).

The Ordinance further qualifies its scope stating that only "effective" Mainland Judgments may be registered for enforcement in Hong Kong and these are judgments: (i) of the Supreme People's Court, High People's Court or Intermediate People's Court from which no appeal is allowed or the time limit for an appeal has expired and where no such appeal has been made; (ii) which are given in accordance with the trial supervision system in the Mainland; (iii) made on or after 29 January 2024; and (iv) which are also enforceable in the Mainland.

The Ordinance also states that it applies to Hong Kong Judgments defining them as those that are: (i) given in a civil proceedings (but not by judicial review or from any exercise of administrative power); or (ii) given in Hong Kong criminal proceedings for compensation or damages from a party; and (iii) not expressly excluded.

Only "effective" Hong Kong Judgments are enforceable in the Mainland and these are judgments: (i) of the Court of Final Appeal, Court of Appeal, Court of First Instance, Competition Tribunal, District Court, Lands Tribunal, Labour Tribunal and Small Claims Tribunal; (ii) made on or after 29 January 2024; and (iii) which are also enforceable in Hong Kong. Before seeking to enforce the Hong Kong Judgment it is not necessary to wait for an appeal, or the time limit of such to expire or an on-going appeal to be completed.

The Ordinance further clarifies that a Hong Kong Judgment also means judgments, orders, decrees, allocators (costs orders) or certificates of fixed costs of the Hong Kong Courts and Tribunals listed in subparagraph (i) directly above.

Expressly excluded judgments

Excluded from the Ordinance's enforcement regime are judgments involving: (i) matrimonial or family law cases (see sections 5(1)(a) and 6); (ii) succession, the administration or distribution of an estate (section 5(1)(b)); (iii) various intellectual property matters mostly related to patents (sections 5(1)(c) and 7); (iv) marine pollution, limitation of marine liability, general average, emergency towage/salvage, maritime lien or carriage of passengers by sea (section 5(1)(d)); (v) specified corporate process or the bankruptcy of a natural person (section 5(1)(e)); (vi) legal capacity, disappearance and/or death (section 5(1)(f)); (vii) proceedings about the validity of arbitral awards or to set aside an arbitral award (section 5(1)(g)); and (viii) proceedings for recognition or enforcement of judgments from Courts outside of the Mainland and Hong Kong (section 5(1)(h)).

Also excluded are orders for interim relief or anti-suit injunctions.

How and by whom?

The Ordinance defines a judgment creditor ("**Judgment Creditor**") as a party: (i) in whose favour a judgment was given; or (ii) to whom it has been assigned; or (iii) who has been vested such rights by succession.

Effective Mainland Judgment

A Judgment Creditor of an effective Mainland Judgment, or any part thereof, may pursuant to the Ordinance apply ex parte to the Court of First Instance for a registration order.

Parties have 2 years to register an effective Mainland Judgment in Hong Kong. Where the Mainland Judgment requires a payment of a sum of money, the 2 year period begins to run from the date the judgment provided

the sum be paid by, or if no such date was given, when the judgment became effective in the Mainland. Where the default is the non-performance of an ordered act, registration can be made from the date of the non-compliance.

Sums to be included in the registration process include interest due on the effective Mainland Judgment under Mainland law, certified costs, fines, charges and the costs of the registration procedure. Punitive or exemplary damages other than in very limited circumstances² should not be included.

Once a Judgment Creditor has a registration order, they need to serve it on all persons it may be enforced upon³ who may then, within 14 days of service, unless a longer or shorter period is specified, apply to set the registration order aside. The set aside grounds are mostly listed in section 22 of the Ordinance, are numerous and include: (i) the defendant in the Mainland proceedings not being summonsed to appear or given a reasonable opportunity to defend the proceedings; (ii) the Mainland Judgment was obtained by fraud; and (iii) enforcement is against Hong Kong public policy.

According to the Ordinance's rules, no action to enforce a registered Mainland Judgment may be taken until after the expiry of the period to set aside a registration order or the final determination of the set aside application.

Effective Hong Kong Judgment

A Judgment Creditor of an effective Hong Kong Judgment must apply ex parte by affidavit to the Court/Tribunal concerned for a certified copy of their judgment providing the necessary particulars about the procedure, judgment and default (see the Ordinance's rule 21(2)).

A certificate for the Hong Kong Judgment should also be provided with the originating process (writ or originating summons) and a copy of the reasoned judgment (if one). According to the Ordinance's rule 23(3), the certificate must state: (i) the judgment is an effective Hong Kong Judgment; (ii) whether the originating process were served and how; (iii) the details of non-compliance with the Hong Kong Judgment; (iv) whether there were and what were the objections to jurisdiction in Hong Kong; (v) what enforcement steps were taken in Hong Kong; (vi) the timing for any appeal and if made its details; (vii) whether interest accrues on the judgment; and (viii) any other relevant matter.

With the above it will be easier to register and enforce the Hong Kong Judgment in the Mainland. The Arrangement provides that an effective Hong Kong Judgment (duly certified as described above) is to be filed to the Intermediate People's Court of the place of residence of the applicant or respondent or where the respondent's property is located. The Arrangement is to be implemented by way of judicial interpretation.

Comments

While the procedures to register an effective Mainland Judgment under the Ordinance and to obtain a certified copy and certificate of an effective Hong Kong Judgment are not straightforward, the new regime will undoubtedly give greater opportunities for the enforcement and recovery of their judgments debts for Mainland and Hong Kong judgment creditors alike.

² See section 18(3) of the Ordinance.

³ Service on a natural person is effected by personal service or by registered post to their usual or last known address. Service on a body of persons is effected by personal service on an officer or by registered post to the registered/principal office.

Because of the Stephenson Harwood Wei Tu China Association, the Hong Kong and Mainland law capabilities that we and Wei Tu Law Firm together have, we are very well placed to seamlessly assist clients to enforce Mainland Judgments in Hong Kong and Hong Kong Judgments in the Mainland.

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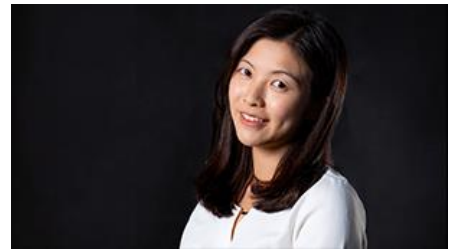


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