

Arrangement on Reciprocal Enforcement of Judgements Signed

An Arrangement on Reciprocal 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 was signed in Hong Kong today (July 14).

The Arrangement was signed by the Secretary for Justice, Mr Wong Yan Lung, SC, and the Vice President of the Supreme People's Court, Grand Justice Mr Huang Songyou, at the Central Government Offices.

The Arrangement is another mutual legal assistance agreement reached between the two places in accordance with Article 95 of the Basic Law, following the signing of the Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Proceedings and the Arrangement Concerning Mutual Enforcement of Arbitral Award in 1999.

Speaking at the signing ceremony, Mr Wong said the objective of the new Arrangement was to establish a new and convenient mechanism for the reciprocal enforcement of judgments made by the courts of the Mainland and of the HKSAR so that a judgment creditor would no longer need to spend a large amount of time and money to bring a legal action again in the place where the property of the debtor was situated.

Mr Wong noted that the details of the new mechanism were finalised at his visit to the Supreme People's Court in Beijing in April this year.

He said that in the initial phase, the new mechanism under the Arrangement would be subject to appropriate restrictions.

"Firstly, the Arrangement is only applicable to money judgments on disputes arising from commercial contracts where the parties concerned, on the basis of freedom of contract, have made an agreement in writing in which a court of the Mainland or a court of the HKSAR is expressly designated as the court to have sole jurisdiction for resolving the dispute concerned."

Mr Wong said the judgments he referred to did not cover all judgments made by any of the courts of the Mainland or of the HKSAR.

"For the Arrangement to be applicable, the judgment must be made, in the case of the Mainland, by an Intermediate People's Court or above or a Basic People's Court that has been authorised to exercise jurisdiction in civil and commercial cases involving foreign parties; or, in the case of the HKSAR, by the District Court or above.

"In order to meet the finality requirements at common law, the Supreme People's Court will lay down a set of special procedures for the retrial of a case on the Mainland, should such a retrial be necessary, where an application for enforcement of the judgment concerned made by a Mainland court has been filed with an HKSAR court," he said.

Mr Wong added that in addition, the Arrangement also stipulated the grounds on which the courts of both places could refuse to enforce a judgment with a view to protecting the interests of debtors. "Such safeguards are basically the same as those provided by the current laws in Hong Kong," he said.

To ensure that the Arrangement could meet the actual needs of the public, Mr Wong said the HKSAR Government had consulted the Legislative Council's Panel on Administration of Justice and Legal Services, the legal professional bodies and the relevant chambers of commerce on the subject matter and framework of the Arrangement.

"On the premise of protecting the interests and freedom of contracting parties, we have taken into full account the laws and legal systems of the two places and drawn reference from similar international laws and practices when devising the new mechanism," he said.

"I believe that this mechanism can provide convenience for, and enhance the confidence of people who are involved in business dealings in the two places, and duly address the concerns and issues raised by various sectors."

Mr Wong noted that contracting parties would have a further option in future. "They may choose to initiate proceedings and apply to the appropriate court for enforcement of a judgment if the situation so warrants, having given due consideration to the place where the property of the debtor is situated.

"The Arrangement should alleviate the concerns of investors about litigation and enforcement of judgments and make the business environment of the two places more attractive. At the same time, it can also strengthen Hong Kong's position as a regional centre for dispute resolution," he said.

Also speaking at the signing ceremony, the Vice President of the Supreme People's Court, Mr Huang Songyou, said the recognition and enforcement of judgments in civil and commercial matters was an integral part of the subject of mutual legal assistance between the Mainland and the HKSAR.

"Prior to Hong Kong's Reunification with China, no arrangement existed between the two places on the reciprocal recognition and enforcement of judgments," Mr Huang said.

He said the Supreme People's Court and the Government of the HKSAR had actively and steadfastly taken forward the task according to the provisions of the Basic Law of the HKSAR and the principles of mutual respect, discussing on an equal basis, seeking common ground while reserving differences, dealing with the easier issues first and striving for concrete results.

"Since the first meeting on July 25, 2002, a number of proposals have been put forward and discussed thoroughly by both sides. Altogether seven consultation meetings have been held and the text has been amended 26 times before we finally settled on the text which will be signed today," he said.

"The signing of the Arrangement is a manifestation of the implementation of the Basic Law of the HKSAR in the juridical field and a landmark symbolising the ongoing progress of legal assistance between the Mainland and the HKSAR," Mr Huang said.

"The signing of the Arrangement marks a big step forward towards a closer relationship of legal assistance between the two places. The scope of mutual legal assistance is extending from the service of judicial documents in civil and commercial proceedings and enforcement of arbitral awards to a broader scope at a higher level.

"The signing of the Arrangement will undoubtedly have a positive effect on the successful implementation of 'One Country, Two Systems', the protection of the lawful interests of the parties concerned, the upholding of the authority of judicial

decisions made by the courts of the two places, the promotion of the economic development of the Mainland and the HKSAR, as well as the long-term prosperity of Hong Kong," Mr Huang said.

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