

**Key Features of 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
Pursuant to Choice of Court Agreements between Parties Concerned
("the Arrangement")**

The Arrangement covers money judgments given by a designated court of either the Mainland or the HKSAR exercising its jurisdiction pursuant to a valid exclusive choice of court clause contained in a business-to-business agreement. The key elements are set out below.

Scope

2. The Arrangement only covers judgments that –
 - (a) require payment of money in business-to-business cases. That is, employment contracts and contracts to which a natural person acting for personal consumption, family or other non-commercial purposes is a party will be excluded;
 - (b) relate to disputes in which the parties concerned have agreed in written form to designate a people's court of the Mainland or a court of the HKSAR as the forum to have sole jurisdiction for resolving such dispute; and
 - (c) are final and conclusive.

Levels of Courts

3. Judgments from the following courts of the Mainland and HKSAR are covered:
 - (a) in the case of the Mainland, any judgment –
 - i. of the Supreme People's Court;
 - ii. of the first instance made by a Higher or Intermediate People's Court or a designated Basic Level People's Courts which has been authorized to exercise jurisdiction in civil and commercial cases of the first instance involving foreign

parties, or Hong Kong, Macao and Taiwan parties from which no appeal is allowed according to the law, or in respect of which the time limit for appeal has expired and no appeal has been filed;

iii. of the second instance; or

iv. made in accordance with the trial supervision procedure by bringing up the case for retrial by a people's court at the next higher level.

(b) in the case of HKSAR –
a judgment of the District Court or above.

4. For the purposes of the Arrangement, a judgment includes any judgment, ruling, conciliation statement and order of payment in the case of the Mainland, and includes any judgment, order and allocatur in the case of HKSAR.

Safeguards

5. The Arrangement provides for grounds for refusal of enforcement which are similar to common law rules and those stipulated under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319). An application for recognition and enforcement of a judgment will be refused if –

(a) the choice of court agreement is invalid under the law of the place chosen by agreement of the parties where the original trial was conducted, unless the chosen court has determined that the choice of court agreement is valid;

(b) the judgment has been fully executed;

(c) the court of the place where enforcement is sought has exclusive jurisdiction over the case according to its law;

(d) the losing party has not been given sufficient time to defend his case;

(e) the judgment has been obtained by fraud; or

(f) the court of the place where enforcement is sought has made a

prior judgment on the same cause of action.

6. In addition, the court concerned shall refuse an application for recognition and enforcement of a judgment, if–

- (a) in the case of the People’s Court of the Mainland, it considers that the enforcement of the HKSAR judgment is contrary to the social and public interests of the Mainland; or
- (b) in the case of the HKSAR court, it considers that the enforcement of the Mainland judgment is contrary to the public policy of the HKSAR.

Finality

7. At common law, in order to establish that a foreign money judgment is final, it must be shown that the court, by which the judgment was pronounced, conclusively, finally and forever established the existence of the debt in question so as to make it *res judicata* between the parties. A judgment can still be regarded as final even if it is under appeal.

8. Under the trial supervision system in the Mainland, a party to the case, a people’s court or a people’s procuratorate at a higher level may initiate a review of a legally effective judgment subject to certain conditions. This could result in the retrial of the case by the original trial court. Hence, there were instances where the Hong Kong courts ruled that judgments of the Mainland courts could not be considered final and conclusive for the purpose of seeking enforcement in Hong Kong.

9. For the purpose of the Arrangement, special procedures will be adopted in order to address the common law requirements of finality which are to be set out in the Arrangement –

- (a) only a final judgment will be recognized and enforced;
- (b) where an application to enforce a Mainland court judgment has been made in Hong Kong and the trial supervision procedure calling for a retrial is subsequently invoked in the Mainland, the case will be brought up for a retrial by a higher court. This is to ensure that the People’s Court which pronounced the original judgment will not have the opportunity to vary or abrogate the very judgment of which enforcement is sought;

- (c) a certificate of “final judgment” to be issued by the relevant Mainland court must be submitted to the Hong Kong court by the judgment creditor seeking enforcement; and
- (d) the Supreme People’s Court of the PRC will issue a judicial interpretation to set out the above special retrial procedures applicable to Mainland judgments sought to be enforced in Hong Kong under the Arrangement. In addition, an explanatory document on the new procedures will be drawn up and distributed by the Supreme People’s Court before the Arrangement comes into effect.

10. The above special procedures are considered to be generally in line with the requirements laid down by Hong Kong courts for determining the finality and conclusiveness of a foreign judgment.

Other Provisions

11. The Arrangement will also provide for the conditions of applying to the relevant courts for the recognition and enforcement of a judgment, and that the application procedures should be governed by the law of the place where enforcement of the judgment is sought. A judgment recognized in accordance with the Arrangement will have the same force and effect as one being made by a court of the place where enforcement is sought. Where an appeal against the relevant judgment was lodged or an application to bring up the case for retrial in accordance with the procedure for trial supervision in the Mainland has been made, as the case may be, the recognition and enforcement procedure may be suspended.
