

(Courtesy Translation)

**Interpretation by the Supreme People's Court on 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**

(Adopted at the 1390th Meeting of the Judicial Committee of the Supreme People's Court
on 12 June 2006)

Judicial Interpretation No. 9 of [2008]

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Supreme People's Court Notice

In accordance with the provision of Article 95 of the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* and through mutual consultation between the Supreme People's Court and the Hong Kong Special Administrative Region, 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 (hereinafter called "the Arrangement") was made and signed on 14 July 2006. The Arrangement, adopted at the 1390th Meeting of the Judicial Committee of the Supreme People's Court on 12 June 2006, is now promulgated. By consensus of both parties, the Arrangement shall take effect on 1 August 2008.

3 July 2008

In accordance with the provision of Article 95 of the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* and through mutual consultation between the Supreme People's Court and the Government of the Hong Kong Special Administrative Region (HKSAR), the following Arrangement is hereby made for the recognition and enforcement of judgments in civil and commercial matters pursuant to choice of court agreements made between the parties concerned :

Article 1 Where any people's court of the Mainland or any court of the HKSAR has made an enforceable final judgment requiring payment of money in a civil and commercial case pursuant to a choice of court agreement in writing, any party concerned may apply under this Arrangement to a people's court of the Mainland or a court of the HKSAR for recognition and enforcement of the judgment.

Article 2 "An enforceable final judgment" under this Arrangement means -

- (1) in the case of the Mainland, :
 - (i) any judgment made by the Supreme People's Court;
 - (ii) any judgment of the first instance made by a Higher or Intermediate People's Court or a Basic People's Court which has been authorized to exercise jurisdiction of the first instance in civil and commercial cases involving foreign, Hong Kong, Macao and Taiwan parties (a list of such courts is at Annex), 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; any judgment of the second instance; and any legally effective judgment made in accordance with the procedure for trial supervision by bringing up the case for a retrial by a people's court at the next higher level.
- (2) in the case of the HKSAR, any legally effective judgment made by the Court of Final Appeal, the Court of Appeal and the Court of First Instance of the High Court and the District Court.

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

Where a case is to be retried by a people's court of the Mainland in accordance with the law after an application for recognition and enforcement of the judgment in the same case has been filed with a court of the HKSAR, the case shall be brought up for retrial by a people's court one level higher than the people's court which made the legally effective judgment.

Article 3 A “choice of court agreement in writing” referred to in this Arrangement means any agreement in written form made, as from the day of commencement of this Arrangement, by the parties concerned in which a people’s court of the Mainland or a court of the HKSAR is expressly designated as the court having sole jurisdiction for resolving any dispute which has arisen or may arise in respect of a particular legal relationship.

A “particular legal relationship” referred to in this Article means civil and commercial contracts between the parties concerned, excluding any employment contracts and contracts to which a natural person acting for personal consumption, family or other non-commercial purposes is a party.

“In written form” referred to in this Article means a form in which the contents may be displayed in visible form and are accessible for subsequent reference and use, such as a written contract, a letter or an electronic data message (including a telegram, a telex, a facsimile, an electronic data interchange and an e-mail).

A choice of court agreement in writing may consist of one or several documents in written form.

Unless otherwise provided in the contract, a clause for the choice of court in a contract exists independently and its validity will not be affected by the modification, discharge, termination or nullification of the contract.

Article 4 An application for recognition and enforcement of a judgment in civil and commercial matters which meets the requirements of this Arrangement shall be filed, in the case of the Mainland, with the Intermediate People’s Court at the place of domicile or ordinary residence of the party against whom the application is filed or the place where the property of that party is situated and, in the case of the HKSAR, with the High Court of the HKSAR.

Article 5 If the place of domicile or ordinary residence of the party against whom the application is filed or the place where the property of that party is situated falls within the jurisdiction of different Intermediate People’s Courts of the Mainland, the applicant shall elect to apply to any one of such people’s courts for recognition and

enforcement of the judgment, and shall not file his applications separately with two or more people's courts.

If the place of domicile or ordinary residence of the party against whom the application is filed or the place where the property of that party is situated falls within the Mainland and within the HKSAR, the applicant may file separate applications with the courts of both places at the same time. The total amount recovered from enforcing the judgment in the courts of the two places respectively shall in no case exceed the sum specified in the judgment. The court of one side which has enforced the judgment in part or in whole shall, at the request of the court of the other side, provide information on the status of its enforcement.

Article 6 An applicant applying to the court concerned for recognition and enforcement of a judgment shall submit the following documents :

- (1) an application for recognition and enforcement;
- (2) a copy of the judgment sealed by the court which made the final judgment;
- (3) a certificate issued by the court which made the final judgment, certifying that the judgment is a final judgment as referred to in Article 2 of this Arrangement and enforceable at the place where the judgment was made;
- (4) identification documents :
 - (i) where the applicant is a natural person, an identity card or a notarized copy of the identity card shall be submitted;
 - (ii) where the applicant is a legal person or any other organization, a notarized copy of registration record shall be submitted;
 - (iii) where the applicant is a foreign person or any other organization, corresponding notarization and authentication documents shall be submitted.

Where any document submitted to a people's court of the Mainland is not in the Chinese language, the applicant shall submit a Chinese translation which has been duly certified correct.

No further notarization is required by a court of the place where enforcement of the judgment is sought in respect of the certificate issued by the court as required by this Article.

Article 7 An application for recognition and enforcement shall specify the following :

- (1) where the party concerned is a natural person, his name and domicile; where the party concerned is a legal person or any other organization, its name, domicile and the name, duties and domicile of its legal representative or principal responsible person;
- (2) the grounds for and particulars of the application; the place where the property of the party against whom the application is filed is situated; and the status of the property;
- (3) whether any application has been made for enforcement of the judgment at the place where the judgment was made and the status of its enforcement.

Article 8 Except otherwise provided in this Arrangement, the procedure for an applicant to apply for recognition and enforcement of a judgment made by a people's court of the Mainland or a court of the HKSAR shall be governed by the law of the place where enforcement of the judgment is sought.

The time limit for an applicant to apply for recognition and enforcement of a judgment shall be two years.

Where an application for enforcement of a judgment made by a court of the Mainland is made in the HKSAR, the above-mentioned time limit shall be calculated from the last day of the period for performance specified in the judgment. If the judgment specifies performance in stages, the time limit shall be calculated from the last day of the

period specified for each stage of performance. If the judgment does not specify the period for performance, the time limit shall be calculated from the day when the judgment becomes effective. Where an application for enforcement of a judgment made by a court of the HKSAR is made in the Mainland, the time limit shall be calculated from the day on which the judgment becomes enforceable, which shall be the day of the judgment unless the judgment specifies another period of performance, in which case the time limit shall be calculated from the last day of the period of performance specified in the judgment.

Article 9 With respect to a judgment subject to an application for recognition and enforcement, if a debtor under the original judgment adduces evidence to show any of the following situations, the court dealing with the application shall, upon having examined such evidence and found any of the said situations proved, refuse to recognize and enforce the judgment :

- (1) the choice of court agreement is invalid under the law of the place of the court 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;
- (2) the judgment has been wholly satisfied;
- (3) the court of the place where enforcement of the judgment is sought has exclusive jurisdiction over the case according to the law of the same place;
- (4) the party that did not appear in court and against whom a judgment was given had not been summoned according to the law of the place where the original trial was conducted or the party had been summoned according to such law but had not been given such time to defend the proceedings as specified by such law. However, if the service was effected by way of public announcement according to the law or relevant regulations of the place where the original trial was conducted, it shall not be regarded as a case mentioned above;
- (5) the judgment has been obtained by fraud;
- (6) a judgment on the same cause of action between the parties has been made by a court of the place where enforcement of the judgment is sought, or by a

court of a foreign country or outside the territory, or an arbitral award has been made by the arbitration body concerned, and the said judgment or award has already been recognized or enforced by the court of the place where enforcement of the judgment is sought.

Recognition and enforcement of a judgment shall be refused if the people's court of the Mainland considers that the enforcement of the judgment made by the court of the HKSAR in the Mainland is contrary to the social and public interests of the Mainland, or if the court of the HKSAR considers that the enforcement of the judgment made by the people's court of the Mainland in the HKSAR is contrary to the public policy of the HKSAR.

Article 10 Where, in the case of a judgment made by a court of the HKSAR, a judgment debtor concerned has lodged an appeal or an appeal is pending, a people's court of the Mainland may, upon having examined the above situation and found it proved, suspend the recognition and enforcement procedures. After the appeal, the recognition and enforcement procedures shall be resumed if the original judgment is upheld in part or in whole, or terminated if the original judgment is reversed.

Where, in the case of a judgment made by a people's court of the Mainland, a decision has been made by a local people's court of the Mainland to bring up the case for retrial in accordance with the procedure for trial supervision, or a decision has been made by the Supreme People's Court to bring up the case for retrial, the court of the HKSAR may, upon having examined the above situation and found it proved, may suspend the recognition and enforcement procedures. The recognition and enforcement procedures shall be resumed if the original judgment is upheld in part or in whole upon retrial, or terminated if the original judgment is reversed upon retrial.

Article 11 A judgment recognized in accordance with this Arrangement shall have the same force and effect as one being made by a court of the place where enforcement of the judgment was sought.

Article 12 Where any party concerned is aggrieved by the decision on the recognition and enforcement of a judgment, he may apply, in the case of the Mainland, to a

people's court at the next higher level for review. In the case of the HKSAR, he may appeal against the decision in accordance with its law.

Article 13 The court shall not accept another action brought by a party based on the same facts during the period in which an application for recognition and enforcement of the judgment is being dealt with by the court.

The court shall not accept another action brought by a party based on the same facts if the judgment has been recognized and enforced by the court.

Where recognition or enforcement of a judgment has been refused under Article 9 of this Arrangement, the applicant shall not make another application for recognition and enforcement of the judgment but is allowed to bring an action on the same facts in a court of the place where enforcement of the judgment is sought in accordance with the law of the same place.

Article 14 The court may, before or after accepting any application for recognition and enforcement of a judgment and as requested by the applicant, impose property preservation or mandatory measures upon assets of the party against whom the application is filed, in accordance with the law of the place where enforcement of the judgment is sought on property preservation or injunction restraining the transfer of assets.

Article 15 Any party who applies to the relevant court for enforcement of a judgment shall pay the enforcement fees or court fees prescribed by the laws and regulations regarding the costs of litigation of the place where enforcement of the judgment is sought.

Article 16 The scope of reciprocal recognition and enforcement of judgments by the courts of the Mainland and of the HKSAR shall include, apart from the sum specified in the judgment, any interest that becomes due under the judgment as well as lawyers' fees and litigation costs that have been certified by the court. However, taxes and fines are not included.

In the case of the HKSAR, “litigation costs” refer to the costs taxed in an allocatur or ordered by a judge or registrar.

Article 17 This Arrangement shall apply to any judgment made after the day of commencement of this Arrangement (including the day of commencement) by the courts of the Mainland and of the HKSAR.

Article 18 In the event of any problem arising in the course of implementing this Arrangement or a need for amendment of this Arrangement, it shall be resolved through consultations between the Supreme People’s Court and the Government of the HKSAR.

Annex: List of Basic People’s Courts of the Mainland Authorized to Exercise Jurisdiction of the First Instance in Civil and Commercial Cases Involving Foreign, Hong Kong, Macao and Taiwan Parties as at 31 May 2006.

Annex:

List of Basic People’s Courts of the Mainland Authorized to Exercise Jurisdiction of the First Instance in Civil and Commercial Cases Involving Foreign, Hong Kong, Macao and Taiwan Parties
(as at 31 May 2006)

Guangdong Province

The People’s Court of Yuexiu District, Guangzhou

The People’s Court of Haizhu District, Guangzhou

The People’s Court of Tianhe District, Guangzhou

The People’s Court of Panyu District, Guangzhou

The People’s Court of Luogang District, Guangzhou

The People’s Court of Nansha District, Guangzhou

The People’s Court of Futian District, Shenzhen

The People’s Court of Luohu District, Shenzhen

The People’s Court of Baoan District, Shenzhen

The People’s Court of Longgang District, Shenzhen

The People’s Court of Nanshan District, Shenzhen

The People’s Court of Yantian District, Shenzhen

The People’s Court of Chancheng District, Foshan

The People’s Court of Dongguan

The People's Court of Zhanjiang Economic & Technological Development Zone
The People's Court of Huizhou Dayawan Economic & Technological Development Zone

Shandong Province

The People's Court of Jinan Hi-Tech Industrial Development Zone
The People's Court of Zibo Hi-Tech Industrial Development Zone
The People's Court of Taian Hi-Tech Industrial Development Zone
The People's Court of Yantai Economic & Technological Development Zone
The People's Court of Rizhao Economic Development Zone

Hebei Province

The People's Court of Shijiazhuang Hi-Tech Industrial Development Zone
The People's Court of Langfang Economic & Technological Development Zone
The People's Court of Qinhuangdao Economic & Technological Development Zone

Hubei Province

The People's Court of Wuhan Economic & Technological Development Zone
The People's Court of Wuhan Donghu New Technology Development Zone
The People's Court of Xiangfan Hi-Tech Industrial Development Zone

Liaoning Province

The People's Court of Shenyang Economic & Technological Development Zone
The People's Court of Shenyang Hi-Tech Industrial Development Zone
The People's Court of Dalian Economic & Technological Development Zone

Jiangsu Province

The People's Court of Suzhou Industrial Park
The People's Court of Wuxi Hi-Tech Industrial Development Zone
The People's Court of Changzhou Hi-Tech Industrial Development Zone
The People's Court of Nantong Economic & Technological Development Zone

Shanghai Municipality

The People's Court of Pudong New District
The People's Court of Huangpu District

Jilin Province

The People's Court of Changchun Economic & Technological Development Zone

The People's Court of Jilin Hi-Tech Industrial Development Zone

Tianjin Municipality

The People's Court of Tianjin Economic & Technological Development Zone

Zhejiang Province

The People's Court of Yiwu

Henan Province

The People's Court of Zhengzhou Hi-Tech Industrial Development Zone

The People's Court of Luoyang Hi-Tech Industrial Development Zone

Sichuan Province

The People's Court of Chengdu Hi-Tech Industrial Development Zone

The People's Court of Mianyang Hi-Tech Industrial Development Zone

Hainan Province

The People's Court of Yangpu Economic Development Zone

Inner Mongolia Autonomous Region

The People's Court of Baotou Rare Earth Hi-Tech Industrial Development Zone

Anhui Province

The People's Court of Hefei Hi-Tech Industrial Development Zone

The Supreme People's Court may, in light of the requirements of judicial work, add to or delete from the list of Basic People's Courts authorized to exercise jurisdiction of the first instance in civil and commercial cases involving foreign, Hong Kong, Macao and Taiwan parties, and incorporate such changes into the Annex after notifying the Government of the HKSAR.