

Hong Kong: civil and commercial judgments: reciprocal recognition of Hong Kong and mainland court judgments.

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Hong Kong: Enforcing Civil and Commercial Judgments Between Hong Kong and Mainland China: The Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance (Legislative Comment)

The Hong Kong Legislative Council passed The Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance on October 26, 2022. The Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by Courts of the Mainland and the Hong Kong Special Administrative Region, which was signed in January 2019, is implemented through this ordinance. Once implemented, The Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance will eliminate the need for parties to enter into an exclusive jurisdiction agreement to benefit from the mutual recognition of Hong Kong and Mainland court judgements.

Background

The purpose of The Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance is to enable the enforcement of civil and commercial judgments rendered in Mainland China in Hong Kong and vice versa. Providing the requirements of the ordinance are satisfied, the ordinance would permit the straightforward registration of Mainland court judgements in Hong Kong. The authorities of Mainland China and the Hong Kong Special Administrative Region are working on a mechanism to implement the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by Courts of the Mainland and the Hong Kong Special Administrative Region. According to the Hong Kong government, the ordinance will be implemented in six to seven months.

The Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance will only apply to judgments made on or after its effective date, meaning that the existing regime under The Mainland Judgments (Reciprocal Enforcement) Ordinance (the 2006 Arrangement) will continue to apply to Mainland China judgments given under contracts with an exclusive jurisdiction agreement in favour of Mainland courts made prior to the ordinance's implementation.

Key Features

With limited exceptions, under the enhanced mechanism given by the Mainland Judgements in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance, the majority of civil and commercial judgments are enforceable between Hong Kong and Mainland China. This covers nonmonetary and monetary civil judgements, judgments for civil damages given in criminal trials, and some intellectual property judgments, but is not limited to these (e.g. those involving copyright and trademark issues).

Existing arrangements between Hong Kong and Mainland China already cover corporate and personal bankruptcy judgements and marriage and family proceedings. Thus the enhanced mechanism does not apply to these types of matters.

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Comments on The Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance

Once implemented in Hong Kong, the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance would benefit the cross-border civil and commercial matters between Hong Kong and Mainland China due to its enhanced mechanism. The ordinance strengthens Hong Kong's position as the financial centre of Asia. A straightforward registration procedure will considerably aid litigants in Hong Kong in enforcing civil and commercial judgements against Mainland China assets and vice versa.