



# Hong Kong – At a glance: major changes to cross-border enforcement of judgments in Hong Kong and mainland China

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## Introduction

The highly anticipated Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance (the Ordinance) is set to take effect in mid-2023. Once the Ordinance is in place, applicants will be able to enforce a broader range of mainland judgments in Hong Kong by way of a registration procedure and vice versa in relation to Hong Kong judgments in mainland China.

## Key points

The key points of the Ordinance are as follows:

- The new regime will supersede the existing arrangement on reciprocal enforcement of civil and commercial judgments in Hong Kong and mainland China.
- Applicants will be able to enforce a broader range of civil judgments and obtain a wider range of remedies across the boundary between mainland China and Hong Kong.
- Mainland companies should be mindful that onshore assets (in mainland China) could be used to satisfy offshore judgments (in Hong Kong) and vice versa for Hong Kong companies.
- Overall, the enforcement of judgments between Hong Kong and mainland China should be more expedient and less expensive.

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## Background

The highly anticipated bill to enact the Ordinance was passed by the Hong Kong Legislative Council on 26 October 2022. The Ordinance implements 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 (the 2019 Arrangement), which was signed between the Hong Kong and mainland authorities on 18 January 2019.

The 2019 Arrangement will, upon its commencement, supersede 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 2006 Arrangement), which was implemented by the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap 597) on 1 August 2008. The 2006 Arrangement will continue to apply for agreements entered into before the commencement of the 2019 Arrangement.

The Hong Kong government has indicated that the Ordinance will take effect in mid-2023, as soon as the Hong Kong and mainland authorities have put into place the relevant implementation measures. Once the Ordinance is in place, applicants will be able to enforce a broader range of civil and commercial mainland judgments in Hong Kong by way of a simple registration procedure and vice versa in relation to Hong Kong judgments in mainland China.

## Key changes

### **Removal of “sole jurisdiction” requirement**

Under the 2006 Arrangement, litigants must satisfy strict jurisdiction requirements. For mainland judgments to be enforced in Hong Kong, there must be an agreement in writing designating mainland courts as the forum to have “sole jurisdiction” for resolving such disputes. Agreements that designate mainland courts with “non-exclusive jurisdiction” do not satisfy this requirement, given that it cannot preclude jurisdiction of other courts.

The 2019 Arrangement replaces the “sole jurisdiction” requirement with a jurisdictional test. For mainland judgments to be enforced in Hong Kong, the applicant must show a connection between the dispute and mainland China. This includes factors such as:

- the defendant’s place of residence;
- the defendant’s place of business; and
- the place of performance of the contract or commission of the tort.

The same factors are considered for applicants seeking to enforce Hong Kong judgments in mainland China.

### **Recognition of judgments by lower courts**

Under the 2006 Arrangement, only judgments made by designated courts are mutually recognised and enforced. The 2019 Arrangement expands coverage to judgments made by lower courts and other tribunals. In mainland China, judgments of all basic people’s courts are now covered. In Hong Kong, judgments made by tribunals including the Labour Tribunal, the Lands Tribunal, the Small Claims Tribunal and the Competition Tribunal are included, in addition to civil judgments of the Court of Final Appeal, the High Court and the District Court.

### **Expansion of applicable matters**

The 2006 Arrangement is limited to certain civil and commercial contractual disputes. The 2019 Arrangement expands coverage to both contractual and non-contractual disputes. Excluded matters include:

- judgments relating to bankruptcy or insolvency proceedings;
- certain defined matrimonial or family cases;
- certain defined intellectual property cases; and
- certain maritime matters.

### **Expansion of available remedies**

Unlike the 2006 Arrangement (which only covers monetary relief), the 2019 Arrangement includes both monetary and non-monetary relief. In mainland China, judgments, rulings, conciliatory statements and orders of payment are included. In Hong Kong, judgments, orders and decrees are included. However, for both jurisdictions, preservation measures and interim relief are excluded from the 2019 Arrangement.

## Advantages

### *Hong Kong as choice of venue for disputes arising from transactions with mainland element*

The 2019 Arrangement strengthens Hong Kong's unique position as a regional centre for commercial disputes relating to matters with a mainland China connection. The enforcement of judgments between Hong Kong and mainland China will become more expedient and parties' rights should be better protected. Mainland companies should be mindful that onshore assets (in mainland China) could be used to satisfy offshore judgments (in Hong Kong) and vice versa for Hong Kong companies.

### *Less re-litigation in mainland and Hong Kong*

Upon commencement of the 2019 Arrangement, parties may apply to enforce Hong Kong and mainland judgments across the boundary by a registration procedure. In addition, the Ordinance contains mechanisms to prevent duplicative proceedings, including restrictions against proceedings brought by a party on the same cause of action, where a mainland judgment has already been given (and is registered or pending registration in Hong Kong). This should reduce litigation costs and provide litigants with more certainty and finality.

## Comment

At the moment, the provisions under the 2006 Arrangement remain in force. The expanded scope of applicable matters and available remedies under the 2019 Arrangement and the Ordinance will (on current estimates) likely take effect in mid-2023. This will add to the existing legal framework, which already provides for simultaneous enforcement of arbitral awards in Hong Kong and mainland China and cross-border interim measures for arbitral proceedings such as evidence preservation or asset freezing orders.

Overall, the 2019 Arrangement is a welcome change as the enforcement of judgments between Hong Kong and mainland China should be more expedient and less expensive. This cements Hong Kong's unique position as an international and regional centre for commercial disputes involving parties or matters from mainland China.

## Contact us

Please contact **Samuel Hung** or **Anson Lo** if you have any queries regarding the issues raised in this article, or if you wish to consider any commercial dispute resolution matters in Hong Kong.

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