New arrangement between Hong Kong and Mainland for reciprocal recognition and enforcement of judgments in civil and commercial matters

12 February 2019

On 18 January 2019, Hong Kong and the Mainland signed an Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters between the Courts of the Mainland and of the Hong Kong Special Administrative Region (the “Arrangement”), which will take effect on a date to be announced. Once implemented, the Arrangement will apply to judgments rendered after the commencement date and will supersede the existing regime governed by the earlier arrangement entered into between Hong Kong and the Mainland in July 2006, as implemented in Hong Kong through the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597).

The Arrangement applies to both monetary and non-monetary judgments that are considered to be civil and commercial in nature under both Mainland and Hong Kong law. However, the Arrangement excludes, amongst others:

i. judicial review cases and other cases arising directly out of the exercise of regulatory or administrative powers (such as, for example, proceedings before the Market Misconduct Tribunal and the Competition Tribunal);

ii. personal bankruptcy or corporate insolvency cases;

iii. cases concerning succession, administration or distribution of estate; and

iv. family and matrimonial matters which are already covered by the Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases signed in June 2017 (but yet to be in force).

It also excludes from its application judgments on the validity of arbitration agreements, anti-suit injunctions and rulings on interim relief.

In addition to expanding the scope of the reciprocal enforcement mechanism to cover non-monetary judgments (including, amongst others, injunctions and specific performance), the Arrangement does away with the existing requirement of the parties’ advance agreement to submit to the exclusive jurisdiction of a Mainland or HKSAR court. Under the new Arrangement, the party seeking recognition and enforcement will need to establish a jurisdictional basis on the part of the court of the requesting jurisdiction. That may be done by showing, for example, that the defendant has a place of residence, representative office or branch office in the requesting jurisdiction, or that the judgment was rendered in connection with a dispute over a contract which is performed in the requesting jurisdiction.

Certain grounds for a mandatory refusal of an application for recognition and enforcement are provided for in the Arrangement. These include: if the judgment does not meet the jurisdictional requirements (discussed above), if the judgment was obtained by fraud, and if the defendant was not summoned in accordance with the law of the requesting jurisdiction or was not given a reasonable opportunity to make representations or defend its case. However, in circumstances where the requested court is satisfied that the action in which the judgment was produced was contrary to a valid arbitration agreement or a valid jurisdiction agreement, it will have the discretion to determine whether or not to give recognition and enforcement to the judgment.
The new Arrangement is a welcomed step in the right direction, both in terms of providing greater clarity and certainty as to the scope of judgments that may enjoy reciprocal enforcement in Hong Kong and the Mainland and in terms of reducing the need for costly and time-consuming parallel litigations over the same dispute between the same parties.

However, as noted above, the Arrangement does not apply to personal or corporate insolvency matters, where there is an increasing and urgent need for mutual recognition of and provision of assistance to liquidators appointed in Hong Kong in dealing with assets located in the Mainland.

It was indicated by the Department of Justice during the consultation exercise regarding the Arrangement that a separate stand-alone consultation on an arrangement with the Mainland on cross-boundary insolvency matters was in the pipeline. Whilst no details have yet been announced, this foreshadowed consultation on cross-border insolvency with the Mainland will be a significant and long-awaited development to facilitate fairer and more efficient administration of corporate insolvencies with cross-border elements.