Enforcing Foreign Judgments in Hong Kong: A Practical Guide

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Introduction

Hong Kong's regime for the recognition and enforcement of foreign judgments is a fundamental cornerstone of its legal infrastructure, positioning it as a pre-eminent hub for impartial, sanctions-neutral international commercial dispute resolution.

Creditors holding judgments from foreign courts must navigate a system that offers three distinct pathways for enforcement, each with its own procedures and legal requirements. This article provides a practical overview of these methods, with a particular focus on the common law route, which applies to many key commercial jurisdictions, including Russian, BVI and Cayman judgments.

Methods of Enforcement

There are three primary methods of enforcement in Hong Kong, depending on the jurisdiction in which the judgment is attained:

1. **Statutory Regime under the Foreign Judgments (Reciprocal Enforcement) Ordinance**

   The statutory regime is governed under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319) ("FJREO").

   It will apply to judgments from 15 designated jurisdictions: Australia, Austria, Belgium, Bermuda, Brunei, France, Germany, India, Israel, Italy, Malaysia, the Netherlands, New Zealand, Singapore and Sri Lanka.

   Under the procedure, the party who seeks enforcement of an applicable judgment can apply for the registration of the foreign judgment with the Court of First Instance of Hong Kong.

2. **Judgments from Mainland China under the Mainland Judgments (Reciprocal Enforcement) Ordinance**

   Enforcement of judgments from Mainland China is governed by the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) ("MJREO"). Within this context, "Mainland China" does not include Macao SAR.

   While civil and commercial matters were previously governed by two arrangements signed between Hong Kong and the Supreme People's Court of the PRC (dated 14 July 2006 and

18 Jan 2019), the landscape has been significantly reshaped by the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Arrangement signed between Hong Kong and the Supreme People's Court of the PRC on 18 January 2019 which was implemented in Hong Kong via the MJREO on 29 January 2024. This new regime is substantially broader in scope than the 2006 arrangement it replaces.

A party seeking enforcement of a Mainland judgment can apply for registration of the judgment with the Court of First Instance of Hong Kong.

3. Common Law

For judgments from jurisdictions not covered by the statutory regime, such as Russia, the British Virgin Islands (BVI), or the Cayman Islands, enforcement will be governed by common law.

(1) Common Law Enforcement Procedure

The enforcement of foreign judgments in Hong Kong under common law begins with the judgment creditor commencing a fresh action in the High Court in Hong Kong, treating the foreign judgment as a debt claim.

If the foreign judgment such as a Russian judgment is final and conclusive, the creditor may apply for summary judgment under the Rules of the High Court. This streamlined process allows for efficient resolution, provided the judgment meets the necessary legal criteria, including being for a definite sum of money and not involving fraud or violations of public policy.

The debtor, however, may raise specific defences to challenge the enforcement of the foreign judgment. These defences may include the jurisdiction of the foreign court under Hong Kong's conflict of laws rules, whether the judgment is not final or conclusive, or alleging that the judgment was obtained by fraud or in a breach of natural justice. These defences must be substantiated to prevent the entry of judgment in favour of the creditor.

Once the Hong Kong court is satisfied that the foreign judgment meets all requirements and there are no valid defences, it will enter a local judgment in favour of the creditor. This judgment can then be enforced using standard mechanisms, such as garnishee orders or writs of execution.

(2) Common Law Enforcement Procedure - Key Legal Issues

The Hong Kong court will generally recognise and enforce the foreign judgment if the following conditions are met:

(a) Final and Conclusive

The foreign judgment must be final and conclusive on the matter.

Although the FJREO and MJREO holds that a judgment may be considered final and conclusive' even if an appeal is pending in the foreign jurisdiction, in practice, the Hong Kong Court is reluctant to examine the merits of a foreign appeal, and will likely set aside the application entirely or adjourn the application until the appeal is resolved.

(b) *Treatment of Judgments as Foreign Debts*

The foreign judgment must be for a definite sum of money (not for taxes, fines, or penalties). In this connection, the foreign judgment is treated as a simple debt. A foreign judgment made in civil proceedings is only enforceable at common law if it is for a sum of money, such as in respect of compensation or damages to an injured party.

This does not cover non-monetary remedies including foreign judgments for interim/permanent injunctions or specific performance or similar remedies in Hong Kong.

However, in specific circumstances, parties can apply under the High Court Ordinance (Cap. 4) for interim relief. This allows the Hong Kong court to grant interim relief, such as a Mareva (freezing) injunction, in support of foreign proceedings, which can be a powerful tool to prevent the dissipation of assets located in Hong Kong before the foreign judgment can be enforced when necessary.

(c) *Hong Kong Public Policy and Foreign Sanctions*

The foreign judgment to be applied for enforcement must not run contrary to Hong Kong Public Policy or the rules of natural justice. Regarding sanctions, Hong Kong's legal and policy approach is firmly grounded in a principle of 'sanctions-neutrality'. Notably, Hong Kong courts and arbitral tribunals have a strong reputation for applying a neutral basis towards sanctions, as demonstrated in Bank A v Bank B [1] and Linde GmbH and Another v. Ruschemalliance LLC[2]. In both cases, the court's focus on the contractual obligations between both parties, providing a fair hearing despite external political factors and maintaining a neutral stance regarding sanctions reaffirmed that arbitration and foreign enforcement in Hong Kong remains insulated from geopolitical tensions. As a politically neutral venue focused on commerciality, Hong Kong has proven itself a reliable arbitration destination to ensure commercially and politically sensitive disputes are handled fairly and professionally. Russian and Mainland Chinese clients can rely on Hong Kong's neutrality to resolve disputes with international parties, particularly in dealing with politically sensitive contexts and/or involving state-owned entities.

4. Limitation Periods

The limitation period applies to all three pathways, but with differing requirements. Enforcement must be applied within the applicable limitation period of the appropriate pathway.

- Under FJREO – 6 years from the date of the foreign judgment.
- Under MJREO – Generally 3 years from the date of the judgment (under the 2019 Arrangement)

[1] [2024] HKCFI 2529
[2] [2023] HKCFI 2409

- Under common law – 6 years from the date of the foreign judgment

Failure to apply for enforcement within the limitation period may lead to the Courts being reluctant to enforce the foreign judgment.

Conclusion

The enforcement of foreign judgments in Hong Kong is a well established process, but success hinges on selecting the correct procedural pathway and satisfying the strict legal criteria.

For judgments from common law jurisdictions and others not covered by reciprocal ordinances, the common law action for debt remains a robust and effective mechanism.

Creditors must seek legal advice early to ensure all conditions are met, thereby maximising the chances of a successful recovery in Hong Kong.

M.B. KEMP LLP's team of disputes specialists in Hong Kong have extensive experience enforcing foreign judgments and arbitration awards in Hong Kong – for international clients spanning a wide range of jurisdictions.

If you need any assistance, please don't hesitate to contact our team at **M.B. KEMP LLP** or any of the individuals listed below:

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