

**Information Note for
Panel on Administration of Justice & Legal Services**

**Enforcement of Foreign Judgments and
Reciprocal Enforcement of Judgments in Hong Kong
- The Legal Framework**

Judgments awarded in a court other than a court in Hong Kong are often referred to as "foreign judgments", which include judgments awarded in the courts in Mainland China and Macau. At common law foreign judgments have no direct effect in Hong Kong courts and a judgment creditor must -

- (a) sue all over again in a Hong Kong court; or
- (b) sue on the foreign judgments provided certain conditions are fulfilled.

2. On the other hand, Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap.319) provides, by a system of registration, for the enforcement in Hong Kong of certain foreign judgments where there is reciprocal recognition of judgment between Hong Kong and the foreign courts.

Enforcement Under Common Law

3. At common law, a foreign judgment will not be enforced directly by execution or any other process but will be regarded as creating a debt between the parties to it. The judgment debtor's liability arises on an implied promise to pay the amount of foreign judgment under a simple contract. Being a promise under a contract, it is subject to the usual limitation period of 6 years for such legal action.

4. A foreign judgment in personam (i.e. against the person) is enforceable by legal action provided that -

- (a) it is for a definite sum of money, other than a sum payable in respect of taxes, penalties or multiple damages; and
- (b) it is final and conclusive.

5. For the recognition and enforcement under common law, the foreign court should have had international jurisdiction according to common law of the conflict of laws. In this respect, the case law held that, for example -

- (a) the defendant must be present in the country of the foreign court at the date of commencement of the proceedings;
- (b) the defendant submitted or agreed to submit to the jurisdiction of the foreign court;
- (c) the relevant foreign judgment is not irreconcilable with the prior decision of the Hong Kong court in an action between the same parties; and
- (d) the foreign judgment was not obtained in a manner that was contrary to natural or substantial justice.

6. Every presumption is to be made in favour of a foreign judgment and the burden of proof lies on the party who seeks to impeach it.

7. An action on a foreign judgment is usually begun by a writ endorsed with a statement of claim for the amount of the judgment debt and costs. Summary judgment may be given for the plaintiff unless the defendant can set up a credible defence to enforcement. No legal action at common law may be brought at all on a judgment which is registrable under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap.319).

Enforcement Under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap.319)

8. Under section 3 of the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap.319), the Chief Executive in Council may, on the basis of reciprocity, by order direct those jurisdictions whose judgments the Hong Kong courts will enforce. At present, the jurisdictions whose court judgments are enforceable in Hong Kong do not include Mainland China and Macau.

9. The mechanism of reciprocal enforcement of judgments applies to a judgment if -

- (a) it is final and conclusive between the parties thereto;

- (b) there is payable thereunder a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; and
- (c) the judgment is given after the particular jurisdiction is included in an order made under the said Ordinance.

10. An application to register a foreign judgment must be made within 6 years from the date of the judgment. The procedure is relatively simple in that the applicant shall make such application ex-parte on affidavit to a Master. If appropriate, the Master may order a summons to be issued to provide an opportunity for the judgment debtor to be heard. The Court has a register of the judgments ordered to be registered under the Ordinance. A registered foreign judgment has, for the purposes of execution, the same force and effect as if the judgment had been a judgment originally given by a Hong Kong court and entered on the day of registration.

Prepared by

Legal Service Division
Legislative Council Secretariat
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