

DoJ responds to media enquiries

In response to media enquiries on 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, a spokesman for the Department of Justice (DoJ) replied today (January 23) as follows:

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, coming into operation on January 29, 2024, is one of the arrangements for mutual legal assistance in civil and commercial matters between Hong Kong and the Mainland. In response to the need for a clear and comprehensive mechanism on reciprocal enforcement of judgments in civil and commercial matters arising from the increasingly close interaction and co-operation between the two places in terms of trade and economic activities as well as social interactions, the DoJ and the Supreme People's Court concluded the Arrangement in 2019 to reduce the need for relitigation of the same disputes and to better balance the interests of creditors and debtors.

We note that some discussions suggest that after the Arrangement has taken effect, the courts of the two places will notify each other or exchange information on the details or enforcement of the cases. This is a fallacy. As an arrangement for mutual legal assistance between the Mainland and Hong Kong in civil and commercial matters, the Arrangement only concerns reciprocal recognition and enforcement of civil and commercial judgments of the two places. Whether to apply for enforcement of the relevant judgments in the other place is entirely a choice of the parties. The courts of the two places will not exchange information on the status of the cases or enforcement applications made by the parties. Applications for enforcement of judgments are to be initiated by the parties, which is consistent with the current practice for applications for enforcement of foreign judgments in Hong Kong in accordance with the relevant principles under common law and the applicable statutory provisions.

Furthermore, some people suggest that after the implementation of the Arrangement, "judgments of the Mainland courts would become automatically applicable in Hong Kong, and assets in Hong Kong could be confiscated by the Mainland directly." This is absolutely another fallacy. Mainland judgments will not automatically take effect in Hong Kong, and assets in Hong Kong will not be confiscated by the Mainland directly after the Arrangement has come into operation. The creditor under the Mainland judgment must first apply to the Mainland court for a copy of and a certificate for the relevant judgment, then submit together with other relevant documents to the Court of First Instance of the High Court to make a registration application in relation to the relevant Mainland judgment. More importantly, the registrant must notify the other party of the judgment, in order to allow that party to consider applying to the Hong Kong court to set aside the registration in accordance with the Mainland Judgments in Civil and Commercial Matters (Reciprocal

Enforcement) Ordinance. A further application can be made for execution of the relevant Mainland judgment through other legal proceedings on the basis of the Mainland court's judgment only if the registration has not been set aside.

As a matter of fact, the lawful rights of creditors and debtors are fully protected and fairly balanced under the Arrangement, which provides a legal mechanism with a higher degree of certainty and predictability for cross-boundary enforcement of judgments in civil and commercial matters between the two places, thereby enhancing the business environment. The establishment of a legal mechanism between Hong Kong and the Mainland for reciprocal enforcement of judgments in civil and commercial matters fully demonstrates the effective implementation of the fundamental policy of "one country, two systems", and at the same time further consolidates Hong Kong's competitiveness as a centre for international legal and dispute resolution services.