

Public consultation on legislative proposal to implement arrangement with Mainland on reciprocal recognition and enforcement of judgments in civil and commercial matters commences

The Department of Justice (DoJ) today (December 17) launched a public consultation on a legislative proposal to implement 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 (HKSAR) (REJ Arrangement).

The REJ Arrangement, signed between the Supreme People's Court and the HKSAR Government on January 18, 2019, establishes a more comprehensive mechanism for reciprocal recognition and enforcement of judgments in civil and commercial matters between the two sides, thereby reducing the need for re-litigation of the same disputes in both places, offering better protection to parties' interests and enhancing Hong Kong's competitiveness as a regional centre for legal and dispute resolution services.

In formulating the REJ Arrangement, reference has been drawn to the then draft version of the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Hague Judgments Convention), taking into account the practical needs and circumstances of the Mainland and the HKSAR. As far as the scope of application is concerned, the REJ Arrangement goes beyond the Hague Judgments Convention by expressly covering judgments given in respect of disputes over intellectual property rights whilst such judgments are expressly excluded from the Hague Judgments Convention. This major breakthrough makes Hong Kong by far the first jurisdiction to have an arrangement with the Mainland on reciprocal recognition and enforcement of judgments with such a wide coverage, testifying to the unique advantages of "one country, two systems".

The proposed scheme is to implement the REJ Arrangement by introducing a mechanism for registration of judgments given by the courts of the Mainland in civil and commercial matters. The scheme is embodied in the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Bill and the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Rules.

Under the proposed mechanism:

(1) A person may apply to the Court of First Instance (CFI) to have a Mainland judgment in a civil or commercial matter registered with the CFI on an ex parte basis;

(2) The CFI may set aside the registration if the applicant has proved to the satisfaction of the court that any of the exhaustive grounds of refusal exists;

(3) Subject to certain restrictions, the proposed legislative scheme covers both monetary (excluding punitive or exemplary damages) and non-monetary relief; and

(4) A registered judgment may be enforced in the same way as if it were a judgment originally given by the CFI.

The proposed legislative scheme also facilitates the recognition and enforcement in the Mainland of Hong Kong judgments in civil or commercial matters by empowering the Hong Kong court to issue certified copies of and certificates for such Hong Kong judgments.

The consultation paper is now available on the DoJ website (www.doj.gov.hk/en/featured/consultation_paper_on_the_mainland_judgments.html). Members of the public are invited to submit their comments on the proposed Bill and Rules set out in the consultation paper to Policy Affairs Unit 1 of the Constitutional and Policy Affairs Division of the DoJ on or before January 31, 2022, by:

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