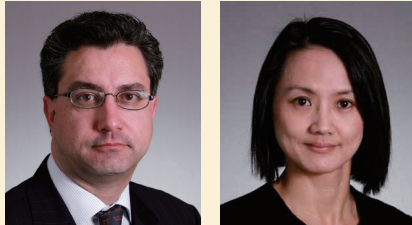


# Legislation on mutual recognition of judgments in the PRC and HK



**By Simon McConnell  
and Mun Yeow**

In July 2006 by the governments of the Hong Kong SAR and the People's Republic of China reached an agreement to implement laws to recognise the judgments of each other's courts (the Arrangement). This milestone agreement led to the Mainland Judgments (Reciprocal Enforcement) Act being passed by the Hong Kong Legislative Council and the PRC Supreme People's Court Judicial Interpretation. Both became effective on 1 August 2008.

Under the new agreement, there are a number of prerequisites that must be met before the High Court in Hong Kong will allow a PRC court judgment to be registered.

**Monetary judgments only:** The Arrangement only applies to judgments that order the payment of a sum of money. Judgments for specific performance or an interlocutory injunction cannot be registered.

**Designated courts:** The judgment must be given by a designated PRC court, which includes the Supreme People's Court, Higher People's Courts, Intermediate People's Courts and specific Basic People's Courts. Currently only those Basic People's Court judgments concerning civil and commercial cases involving foreign, Hong Kong, Macao and Taiwan parties are included.

**Exclusive choice of court agreement required:** The judgment must be based on a dispute arising from a contract made on, or after, 1 August 2008 and in which the parties have agreed will be determined exclusively by the PRC or Hong Kong Courts.

**Judgment must be 'final and conclusive':** As the PRC court system has a mechanism called 'Procedure for Trial Supervision', which

allows for the reopening of cases on a wide range of grounds, it is difficult to show that a PRC judgment is 'final and conclusive'. The Act seeks to overcome this problem by deeming the following judgments 'final and conclusive':

- judgments of the Supreme People's Court;
- first-instance judgments given by a Higher People's Court, an Intermediate People's Court or a recognised Basic People's Court, where no appeal is allowed from the judgment according to PRC law or the time limit for such an appeal has expired without an appeal having been filed; and
- judgments given in a retrial by a People's Court of a level higher than the original court, unless the original court is the Supreme People's Court.

**Effect of registered judgment:** The Act provides that a registered judgment will have the same force and effect as if the judgment had been originally given in the Hong Kong Court of First Instance and entered on the day of registration. A registered judgment will be recognised as conclusive, to prevent subsequent proceedings in Hong Kong founded on the same cause of action.

**How should businesses respond to the Arrangement?:** When negotiating new contracts in which there are Hong Kong and PRC entities, one of the primary legal and commercial decisions now to be made is whether the current common practice of utilising arbitration as the means of dispute resolution in commercial contracts associated with the PRC should convert into court litigation as the resolution method. Businesses should now think about their preferred choice of law and jurisdiction clauses, and consider whether a conversion to litigation, rather than arbitration, best suits their commercial needs and circumstances.

## Allens Arthur Robinson

49/F One Exchange Square

8 Connaught Place, Central, Hong Kong

Tel: (852) 2840 1202 Fax: (852) 2840 0686

Email: [simon.mcconnell@aar.com.au](mailto:simon.mcconnell@aar.com.au)

[mun.yeow@aar.com.au](mailto:mun.yeow@aar.com.au)

[www.aar.com.au](http://www.aar.com.au)