



# Mutual recognition of judgments update



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A groundbreaking agreement was signed in 2006 by the governments of the Hong Kong Special Administrative Region (HKSAR) and the People's Republic of China (PRC) to implement laws that recognise the judgments of the courts of each government. This represents a significant development because, at present, no PRC court judgment has been registered and enforced in Hong Kong. Legislative changes are now underway in Hong Kong to implement this agreement. Here we summarise recent developments and identify key issues arising from legislation.

## Current state of play

A draft bill introduced in March of 2007, established the proposed new system for registering PRC judgments in the Hong Kong High Court, for future enforcement in HKSAR. A revised bill has recently been published to take into account amendments suggested by the Bills committee. However, until the Supreme People's Court issues its Judicial Interpretation and the PRC and HKSAR governments announce the date on which the reciprocal arrangement will come into effect and be implemented, businesses cannot make use of these proposed new laws. To date, the PRC has not indicated when the Judicial Interpretation will be issued.

## Scope of the mutuality

Under the proposed law, there are many prerequisites to be met before the Hong Kong High Court will allow a PRC court judgment to be registered. It is important to know such prerequisites when drafting agreements: The Bill only applies to monetary judgments; judgments must be given by a designated PRC court; they must be final and conclusive; and must be based on a dispute arising from a choice of court agreement made on or after the commencement date of the legislation, and which parties have agreed will be determined exclusively by a PRC court.

## Key implications

Once fully implemented, the arrangement will facilitate direct enforcement of a Hong Kong judgment against assets in the PRC (and vice versa) and avoid the need to re-litigate disputes in the PRC courts, where the assets of the judgment debtor are located.

While the legislation is designed for future disputes, rather than current ones, and although it has not yet taken effect, it is important that businesses plan for the contents of their contracts in light of the opportunities that the arrangement will offer. One of the primary legal and commercial decisions to be made is whether the common current practice of utilising arbitration as the means of dispute resolution in commercial contracts associated with the PRC should be reviewed and altered to provide for court litigation instead.

## Enforcement in mainland China

No matter whether arbitration or litigation is selected, parties still face the challenge of enforcement in the PRC. Enforcing judgments in the PRC is a protracted and difficult process. Three new PRC laws were implemented during 2007 to address enforcement issues. The most recent of these was an amendment to the Civil Procedure Law in late October, motivated by reports that, in 2006, 2.13 million civil case rulings had not been conducted by the due date.

Although the introduction of the reciprocal arrangement potentially gives businesses and their lawyers greater flexibility in structuring PRC-related transactions, until the agreement is implemented and its effectiveness is tested in practice, businesses should carefully review whether they should depart from arbitration as the current available means of dispute resolution in commercial contracts with PRC parties.

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