

Speech by SJ at seminar on New Mechanism for Reciprocal Recognition and Enforcement of Civil and Commercial Judgments between the Courts of Mainland and the Hong Kong Special Administrative Region (English only) (with photo)

Following are the opening remarks by the Secretary for Justice, Mr Paul Lam, SC, at the seminar on the "New Mechanism for Reciprocal Recognition and Enforcement of Civil and Commercial Judgments between the Courts of Mainland and the Hong Kong Special Administrative Region" co-organised by the Supreme People's Court and the Department of Justice today (January 29):

Vice-president of the Supreme People's Court Mr Yang Wanming, Chief Judge of the High Court of the HKSAR The Honourable Mr Justice Poon, judges and judicial officers of the Supreme People's Court and Hong Kong's Judiciary, distinguished guests, ladies and gentlemen,

Good morning. It gives me great pleasure to welcome you all to today's seminar on the "New Mechanism for Reciprocal Recognition and Enforcement of Civil and Commercial Judgments between the Courts of Mainland and the Hong Kong Special Administrative Region" co-organised by the Supreme People's Court and the Department of Justice of the HKSAR.

I would like to begin by expressing our utmost gratitude to the Supreme People's Court for its unwavering support in making today's seminar possible as evidenced by the presence of the very strong delegation led by Vice-president Yang. I would also like to thank the Hong Kong Judiciary for participating in this seminar.

Today marks an important milestone for both the Mainland and Hong Kong because 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" (the Arrangement) concluded on January 18, 2019, formally takes effect in both places.

After years of hard work upon the conclusion of the Arrangement, all legal steps to implement it on the Mainland and in Hong Kong have been completed. From today onwards, in Hong Kong, Mainland judgments in specific types of civil and commercial cases may be recognised and enforced through a new statutory regime under the Mainland Judgments in Civil and Commercial Matters (Reciprocal

Enforcement) Ordinance, Chapter 645 of the laws of Hong Kong. At the same time, on the Mainland, Hong Kong judgments of the same types may be recognised and enforced in accordance with a Judicial Interpretation promulgated by the Supreme People's Court on January 25, 2024, which comes into effect today.

Hong Kong's unique advantages under "one country, two systems"

As I said at last Monday's Ceremonial Opening of the Legal Year, the common law system in Hong Kong is a unique advantage that must be utilised to promote the development interests of China, and to maintain the prosperity of Hong Kong, which are indeed fundamental purposes of the "one country, two systems" principle. And while it is essential to maintain a clear demarcation between the legal system of the Mainland and that of Hong Kong, it is necessary to construct linkages between the two systems so that the unique advantages offered by Hong Kong's common law system may be fully utilised to serve the national interests of China as a whole. This is achieved by, among other things, the conclusion of different types of mutual legal assistance arrangements between the Mainland and Hong Kong pursuant to Article 95 of the Basic Law. The Arrangement is indeed an excellent example demonstrating how such a mutual legal assistance arrangement enables Hong Kong to better utilise the unique advantages offered by Hong Kong's common law system.

"Unique"

The Arrangement is both unique and advantageous. Let me first explain why the Arrangement is unique. First and foremost, Hong Kong is the only jurisdiction that has entered into such an arrangement with the Mainland on reciprocal recognition and enforcement of civil and commercial judgments. There is no similar arrangement between China and other jurisdictions in the world.

For other jurisdictions, in particular, common law jurisdictions, which do not have a similar arrangement with the Mainland, a judgment creditor seeking to recognise and enforce a Mainland judgment would need to rely on common law principles, under which one has to commence a fresh action before the court. It is well known that these common law principles are difficult to apply in practice. For example, it can be very tricky to determine whether a Mainland judgment is "final and conclusive", which is an essential element that needs to be proved under the common law principles.

Another reason why the Arrangement is "unique" is the wide scope of judgments covered by the Arrangement. The Arrangement covers a wider range of judgments on contractual and tortious disputes; and most importantly, certain types of disputes over intellectual property rights. In comparison, even in The Hague Convention of July 2, 2019, on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters which came into effect on September 1, 2023, and applied to almost 30 European countries, intellectual property judgments are completely excluded.

"Advantageous"

The Arrangement is advantageous because it is beneficial to the business community and other people involved in civil and commercial disputes involving cross-border elements. If and when there is a need to recognise and enforce a Mainland judgment falling within the scope of the Arrangement in Hong Kong, people can do so in a much more simple and cost-efficient manner. The Arrangement will make the option of choosing Hong Kong, having a common law system which the international business community is familiar with and have confidence in, as the jurisdiction to resolve any contractual dispute more attractive, knowing that a Hong Kong judgment may be recognised and enforced on the Mainland where the assets of the other contracting party are located. This will be conducive to enhancing Hong Kong's status as an international legal and dispute resolution services centre. It may also make investors and business people from other countries more ready to explore investment and business opportunities on the Mainland.

Key characteristics of the new Ordinance

I would like to take the opportunity to highlight two key characteristics of the Arrangement, implemented by the Ordinance in Hong Kong, which are indeed interrelated.

"Consistent with international practice"

First, the fundamental principles behind the mechanism under the Arrangement are consistent with the prevailing international practice as reflected by, for example, the above-mentioned 2019 Hague Judgments Convention. Indeed, one could see that the provisions of the Arrangement are very similar to those of The Hague Convention. The prevailing international practice aims at promoting judicial co-operation between

different jurisdictions, avoiding multiplicity of legal proceedings in different jurisdictions, and providing a convenient way to enforce a foreign judgment provided that the foreign judgment was obtained in a fair and proper manner. This takes me to the second key characteristic.

"Striking a balance between the need for reciprocal enforcement of judgments and protection of parties' rights"

The second important characteristic of the Arrangement is that it strikes a proper balance between facilitating recognition and enforcement of judgments obtained in the other jurisdiction from the perspective of the judgment creditor on the one hand, and ensuring that only judgments obtained properly and fairly will be recognised and enforced from the perspective of the judgment debtor on the other hand.

If a party wishes to enforce a Mainland judgment in Hong Kong, the Ordinance provides a relatively straightforward registration system whereby he can make a registration application to the court. In essence, all that he needs to do is to provide an authentic copy of the Mainland judgment and a certificate from the Mainland court that the judgment is one in civil and commercial matter which is effective on the Mainland, and make an affirmation providing some essential information. If the court approves the registration application, the Mainland judgment will have the same legal effect as if it were a judgment originally given by the Court of First Instance of Hong Kong on the day of registration. In practice, this means that the Mainland judgment may be used as the legal basis to take further enforcement procedure against the judgment debtor or his assets in Hong Kong, such as bankruptcy or winding up proceedings, charging orders against real properties. The new mechanism reduces the need for re-litigation of the same disputes, and the need to rely on the complicated common law principles to enforce Mainland judgments. It also reduces the costs and time usually associated with the legal proceedings on recognition and enforcement of such judgments.

On the other hand, the Ordinance provides sufficient safeguard to protect the legitimate interests of the judgment debtors. The Ordinance contains a "setting aside" procedure whereby the applicant must notify the judgment debtor of the registration order, and that the judgment debtor has a right to apply to the court to set aside the registration. The Ordinance sets out specific grounds on which a party may rely to set aside a registration, which include, for example, when the Mainland judgment was obtained by fraud, the defendant in the original Mainland proceedings was not

summoned to appear or was not given a reasonable opportunity to defend the proceedings, or on the ground of lack of jurisdiction of the original proceedings. While the Hong Kong court will not reconsider the substantive merits of the Mainland judgment, this "setting aside" procedure serves to ensure that a Mainland judgment will only be recognised and enforced in Hong Kong if it was obtained as a result of due process, and in compliance with fundamental principles of justice and fairness. It is noteworthy that further steps to enforce a registered Mainland judgment may only be taken after the expiry of the period given to the judgment debtor to apply for a setting aside.

Provisions to prevent concurrent proceedings and inconsistent judgments

There are other provisions in the Ordinance to prevent concurrent or multiplicity of proceedings in both the Mainland and Hong Kong, and the risk of inconsistent judgments. For example, if a party has obtained a judgment on the Mainland and apply to register it in Hong Kong, the Ordinance provides that any pending Hong Kong proceedings in respect of the same cause of action between the same parties must be stayed. Further, if the Mainland judgment has already been registered in Hong Kong, a party may not bring the same cause of action in the Hong Kong court again.

Way forward

I hope, by now, I have said enough to whet your appetite. Today, we are very honoured to have eminent judges and legal practitioners from both the Mainland and Hong Kong, who will speak and elaborate on various issues that I have outlined. To ensure that the Ordinance can serve its intended purpose, it is of crucial importance to ensure that both lawyers and potential users fully understand how the new statutory mechanism will actually operate. Apart from organising today's seminar, the Department of Justice has set up a designated webpage on its website including not only the links to the e-versions of the Ordinance and its subsidiary legislation, but also a pamphlet and frequently asked questions which explain the legal provisions in a user-friendly manner that layperson could easily understand.

I am very delighted that over 200 persons attend today's seminar in person. They include fellow legal practitioners, consulate generals of foreign countries in Hong Kong, Legislative Councillors, friends from the business and banking sectors, etc. There are also friends attending this seminar online in Hong Kong and from the

Mainland. I would like to thank all of you for your participation in today's seminar. I must of course thank all the distinguished speakers for your enthusiastic and valuable contribution to the seminar, in particular, those coming from the Mainland. Lastly, I wish you all a very fruitful and enjoyable seminar. Thank you very much.

Ends/Monday, January 29, 2024