



# ICLG

The International Comparative Legal Guide to:

## **Enforcement of Foreign Judgments 2016**

**1st Edition**

A practical cross-border insight into the enforcement of foreign judgments

# Hong Kong

Nick Gall



Gall

Stephen Chan



## 1 Country Finder

- 1.1 Please set out the various regimes applicable to recognising and enforcing judgments in your jurisdiction and the names of the countries to which such special regimes apply.**

Applicable Law/ Statutory regime	Relevant Jurisdiction(s)	Corresponding Section Below
Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319)	Australia, Austria, Belgium, Brunei, France, Germany, India, Italy, Israel, Malaysia, Netherlands, New Zealand, Singapore and Sri Lanka	Sections 3 and 4

## 2 General Regime

- 2.1 Absent any applicable special regime, what is the legal framework under which a foreign judgment would be recognised and enforced in your jurisdiction?**

Absent applicable special regimes set out in various ordinances in Hong Kong, the common law applies as the legal framework in recognising and enforcing foreign judgments in Hong Kong.

- 2.2 What requirements (in form and substance) must a foreign judgment satisfy in order to be recognised and enforceable in your jurisdiction?**

The requirements for recognition of a foreign judgment in Hong Kong will depend on: (a) whether any of the relevant Hong Kong ordinances apply; and (b) if not, whether the common law applies.

### Recognition under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319)

The primary applicable ordinance in Hong Kong is the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319) (the “Ordinance”). If a foreign judgment falls within the statutory regime and is from a country set out in question 1.1 above, the Ordinance is mandatory and no other process can be invoked (including any common law process).

For a foreign judgment to be recognised under the Ordinance:

1. The judgment must be from a superior court, one that has unlimited jurisdiction in civil and criminal matters.

2. The application must be made within six years of the date of the original judgment.
3. The judgment must not have been wholly satisfied.
4. If the judgment has been satisfied in part as at the date of registration, the judgment shall be registered only in respect of the balance remaining payable at that date.
5. The judgment must be enforceable by execution in the country of the original court.
6. The Judgment is final and conclusive between the parties.
7. The judgment is for a sum of money.

### Recognition under Common Law

Should the foreign judgment fall outside of the Ordinance, the common law process can be used. A judgment creditor can apply for a Hong Kong judgment (without a review of the merits of the foreign judgment) if the foreign judgment is:

- (a) final and conclusive upon the merits of the claim in the foreign jurisdiction; and
- (b) a claim for a fixed sum.

### Enforcement of Judgment in Hong Kong

The basic pre-requisite for enforcing a judgment in Hong Kong is to either have a registered foreign judgment, or a local Hong Kong judgment. In terms of the procedure for enforcement, see question 2.4 below.

- 2.3 Is there a difference between recognition and enforcement of judgments? If so, what are the legal effects of recognition and enforcement respectively?**

Yes. There is a difference between recognition and enforcement of judgments. The concept of recognition itself can also be slightly different.

In the context of the Ordinance, recognition means that a foreign judgment is given the same force and effect as if the foreign judgment were a judgment of the Hong Kong Courts.

In the context of the common law, the foreign judgment is recognised only to the extent that it is proof of a valid debt which can be sued upon, and judgment given directly from the Hong Kong Courts.

Recognition of a foreign judgment does not automatically lead to enforcement of the same foreign judgment. The practical effect of recognition is that the foreign judgment becomes enforceable in Hong Kong. The judgment creditor still needs to take additional steps for enforcement. For example, a judgment creditor holding a recognised foreign judgment could enforce that judgment by applying for a garnishee order compelling a bank to pay what it holds on behalf of the judgment debtor to the judgment creditor.

#### 2.4 Briefly explain the procedure for recognising and enforcing a foreign judgment in your jurisdiction.

The procedure for recognition under the Ordinance involves registering the foreign judgment, which can be done in the following way:

1. The judgment creditor of the foreign judgment should apply *ex parte* to the Court of First Instance, High Court, Hong Kong.
2. The application should be supported by an affidavit and a draft order setting out the basis upon which the requirements under the Ordinance are met (see question 2.2 above).
3. If the application and other documents are in order, the Court will register the foreign judgment.
4. The judgment creditor must serve the notice of registration on the judgment debtor.
5. The judgment creditor may attempt to set the registration aside on the grounds set out in question 2.5 below.
6. If the registration is not set aside within the specified time (see question 2.5 below), the judgment creditor may proceed with enforcement of the registered foreign judgment.

The procedure for recognition under the common law is as follows:

- (a) Commence civil proceedings in Hong Kong by way of writ. The writ can be endorsed or include a statement of claim setting out the claim of a debt arising from the foreign judgment.
- (b) The writ must be served on the Defendant. If the Defendant either (a) does not state its intention to defend within 14 days, or (b) provide a defence within 28 days, the Plaintiff can apply for default judgment.
- (c) If a judgment (default or otherwise) is obtained, it can be enforced just like any other Hong Kong judgment.

Once the foreign judgment is either registered or is successfully sued upon under the common law process, the resulting registered foreign judgment or Hong Kong judgment can be enforced. The procedure for enforcement will vary depending on the type of enforcement desired.

For example, an enforcement via garnishee proceedings can be achieved by the following steps:

- Issuing an *ex parte* summons supported by an affidavit. The affidavit must show the identity of the garnishee (e.g. a bank) in Hong Kong and in what way the garnishee is indebted to the judgment debtor.
- At the first hearing, the Court will generally issue a garnishee order to show cause specifying a further hearing date for the garnishee to attend.
- At the second hearing, if the garnishee does not attend or does not dispute liability to the judgment debtor, the Court may make the garnishee order absolute.

#### 2.5 On what grounds can recognition/enforcement of a judgment be challenged? When can such a challenge be made?

Whether there can be grounds for challenging the recognition of a foreign judgment will depend on the method in which recognition has been sought.

##### Challenging Recognition of Foreign Judgment under the Ordinance

For a foreign judgment recognised in Hong Kong by registration under the Ordinance, a judgment debtor can apply to set the registration aside on the following grounds:

1. The requirements for registration were not met.
2. The foreign court had no jurisdiction.

3. The judgment debtor did not receive notice of the foreign proceedings.
4. The judgment was obtained by fraud.
5. The enforcement of the foreign judgment is contrary to public policy in Hong Kong.
6. The rights in the judgment are not vested in the person who made the application for registration.

##### Challenging Recognition of Foreign Judgment under the Common Law

In relation to a foreign judgment sought to be recognised and sued upon through the common law process, the judgment debtor can simply defend the proceedings brought in Hong Kong by the judgment creditor. The judgment debtor can defend on the following grounds:

- (a) That the foreign court had no jurisdiction over the claim.
- (b) The foreign judgment is not final and/or conclusive over the merits of the claim.
- (c) The claim is not for a fixed sum.

##### Challenging Enforcement of Foreign Judgment

If recognition of the foreign judgment is successfully challenged, that would render the foreign judgment unenforceable in Hong Kong. There would be no need to separately challenge enforcement of the foreign judgment.

If recognition of the foreign judgment is unsuccessfully challenged, the judgment debtor may appeal the decision and apply for a stay of execution of the recognised foreign judgment. However, if a stay of execution is not granted, the judgment debtor generally has no standing to challenge any enforcement procedure.

Taking the example of the garnishee application (see question 2.4 above), it is generally made *ex parte*, which means that the judgment debtor is not even notified of the enforcement process. Only the garnishee (e.g. the bank) is notified and has standing to dispute liability to the judgment debtor. There is no standing for any party during a garnishee application to dispute the primary liability between the judgment debtor and creditor.

#### 2.6 What, if any, is the relevant legal framework applicable to recognising and enforcing foreign judgments relating to specific subject matters?

The following specific subject matters are governed by a different legal framework than that of the Ordinance and the common law:

1. Family law and insolvency matters are governed by the Matrimonial Orders (Reciprocal Enforcement) (Cap.188).
2. Particular regimes relating to judgments in connection with the carriage of nuclear materials or oils under the Nuclear Material (Liability for Carriage) Ordinance (Cap.479) and Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap.414).
3. Applications for assistance under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap.525).
4. Probate and letters of administration under the Probate and Administration Ordinance (Cap.10).

#### 2.7 What is your court's approach to recognition and enforcement of a foreign judgment when there is: (a) a conflicting local judgment between the parties relating to the same issue; or (b) local proceedings pending between the parties?

In general, the Hong Kong Court adopts a liberal approach to the recognition and enforcement of judgments.

However, in scenario (a), it is unlikely that a Hong Kong Court will recognise the foreign judgment as being final and conclusive (either for registration under the Ordinance or via the common law process) if there are conflicting local judgments on the same issues.

In terms of scenario (b), it is difficult to see how local proceedings pending between the parties on potentially different issues from the foreign judgment can have any effect on recognition of that foreign judgment in Hong Kong. We do not consider it would.

---

**2.8 What is your court's approach to recognition and enforcement of a foreign judgment when there is a conflicting local law or prior judgment on the same or a similar issue, but between different parties?**

---

As long as the foreign judgment is final and conclusive, the Hong Kong Court will not look behind the foreign judgment and investigate the underlying merits of the foreign judgment. As such, a conflict in local law or prior judgment on the same issue is unlikely to have any effect on the recognition and enforcement of the foreign judgment in Hong Kong.

---

**2.9 What is your court's approach to recognition and enforcement of a foreign judgment that purports to apply the law of your country?**

---

See question 2.8 above. The Hong Kong Court will not normally look at the underlying merits of the foreign judgment as long as all of the other requirements set out in question 2.4 above are met.

---

**2.10 Are there any differences in the rules and procedure of recognition and enforcement between the various states/regions/provinces in your country? Please explain.**

---

No. The laws of Hong Kong apply to Hong Kong generally.

---

**2.11 What is the relevant limitation period to recognise and enforce a foreign judgment?**

---

Under section 4(1) of the Ordinance, a judgment creditor has six years after the date the foreign judgment was registered; the same in the High Court of Hong Kong.

### 3 Special Enforcement Regimes Applicable to Judgments from Certain Countries

---

**3.1 With reference to each of the specific regimes set out in question 1.1, what requirements (in form and substance) must the judgment or arbitral award satisfy in order to be recognised and enforceable under the respective regime?**

---

See questions 2.2 and 2.4 above in relation to the requirements for recognition and enforcement of a foreign judgment. If a foreign judgment falls within the statutory regime and is from a country set out in question 1.1 above, the Ordinance is mandatory and no other process can be invoked (including any common law process).

The Arbitration Ordinance (Cap. 609) (the "Arbitration Ordinance") in Hong Kong provides that any award made in any country (including Hong Kong) can be enforced in Hong Kong as though it were a judgment from the Hong Kong Court of First Instance (the "HK Court"), provided that leave is obtained from the HK Court.

The party seeking leave to enforce must produce:

1. An authenticated original award or a duly certified copy of it.
2. The original arbitration agreement or a duly certified copy of it.
3. If the award or agreement is not in either Chinese or English, a translation of it in either language must be produced and certified by an official or sworn translator, or diplomatic or consular agent.

---

**3.2 With reference to each of the specific regimes set out in question 1.1, does the regime specify a difference between recognition and enforcement? If so, what is the difference between the legal effect of recognition and enforcement?**

---

In respect of foreign judgments, the difference between recognition and enforcement is set out above at question 2.3.

For arbitral awards, the Arbitration Ordinance makes no distinction between recognition and enforcement.

---

**3.3 With reference to each of the specific regimes set out in question 1.1, briefly explain the procedure for recognising and enforcing a foreign judgment or arbitral award.**

---

The procedure for recognising a foreign judgment is set out at question 2.4 above.

To enforce any arbitral award made in any country as though it were a judgment from the HK Court, leave can be obtained from the HK Court by the following process:

1. Making an *ex parte* application with a supporting affidavit. The duty of full and frank disclosure applies.
2. The affidavit should exhibit a certified copy of the Award and the Arbitration Agreement, together with a certified English translation if the Award and/or Arbitration Agreement are not in English, and briefly set out the factual background of the Arbitration and confirm that the award has not been complied with.
3. While it is not a requirement to make a demand for payment before making an enforcement application, it is common practice to do so. This can be done by a written demand for payment as soon as possible. Evidence of unsatisfied demands for the sum owing under the award should be set out in the affidavit.
4. Once leave has been granted, the order must be served on the other party who will have 14 days to contest the order and set it aside. The award cannot be enforced until the expiration of this period.
5. If the order is unopposed after 14 days, the HK Court may grant leave to allow enforcement of the arbitral award as if it were a judgment of the HK Court. The party seeking to enforce the arbitral award can then proceed to enforcement in the usual way (see questions 2.4 above and 4.1 below).

---

**3.4 With reference to each of the specific regimes set out in question 1.1, on what grounds can recognition/enforcement of a judgment or arbitral award be challenged under the special regime? When can such a challenge be made?**

---

The grounds on which recognition and enforcement of a foreign judgment can be challenged are set out at question 2.5 above.



In relation to arbitral awards, the HK Court can refuse to grant leave to enforce an arbitral award under the Arbitration Ordinance if:

1. A party to the arbitration agreement was under some incapacity.
2. The arbitration agreement was not valid, either under the law parties subjected it or under the law of the country where it was made.
3. The dispute related to matters not contemplated within the terms of arbitration or are beyond the scope of terms of arbitration.
4. The arbitral procedure was contrary to what parties agreed or the law where arbitration took place.
5. The award is not yet binding on parties or has been set aside or suspended by a competent authority.

(The above points being the “**Grounds of Refusal**”).

It should be noted that the Arbitration Ordinance draws a subtle distinction between those awards made in a territory that is party to the New York Convention (a “**Convention Award**”) and those that are not (a “**Non-Convention Award**”).

For Convention Awards, the enforcement can only be refused on one of the Grounds of Refusal set out above. The HK Court does not have residual discretion to refuse.

For Non-Convention Awards, the HK Court may refuse to grant leave on any one of the Grounds of Refusal and is not bound to enforce the Non-Convention Award.

In short, the HK Court retains residual discretion for any reason to refuse leave to enforce a Non-Convention Award, whereas no such discretion is retained for Convention Awards.

## 4 Enforcement

### 4.1 Once a foreign judgment or arbitral award is recognised and enforced, what are the general methods of enforcement available to a judgment creditor?

Once the foreign judgment or arbitral award becomes a HK judgment, the normal enforcement routes become available to the Judgment Creditor.

This can be done in several ways: by issuing a writ of execution which directs the bailiff to seize and sell the Judgment Debtor’s goods to satisfy the judgment debt, by presentation of a petition to wind up a judgment debtor company or to declare bankrupt an individual Judgment Debtor; by Examination of the judgment debtor (if company, then one of its officers) before a master by oral cross-examination; by garnishee proceedings; or by charging order.

## 5 Other Matters

### 5.1 Have there been any noteworthy recent (in the last 12 months) legal developments in your jurisdiction relevant to the recognition and enforcement of foreign judgments or awards? Please provide a brief description.

- The Hong Kong International Arbitration Centre (HKIAC) has been gaining prominence in the last 12 months given the increase in M&A volume in the Asia-Pacific region (hitting over the trillion-dollar mark for the first time).
- Despite the requirement that foreign judgments be final and conclusive, the Courts of Hong Kong have consistently upheld registration of foreign judgments (such as in *Woodcraft Corporation & Ors v Yang Hsiu Li & Anor* [2015] HKCFI 428) even where foreign judgments are subject to appeal. Whether a foreign judgment is final and conclusive continues to be a difficult matter to predict and will depend heavily on the facts of each case.
- In January 2016, the HKIAC released a practice note on the consolidation of arbitrations if they involve common questions of law or fact, if the claims arise out of the same transaction or series of transactions, and they have a compatible arbitration agreements.

### 5.2 Are there any particular tips you would give, or critical issues that you would flag, to clients seeking to recognise and enforce a foreign judgment or award in your jurisdiction?

- In straightforward cases the application under common law can take six to twelve months. Under the Ordinance, when uncontested, can take two to four months to complete.
- Affidavits in support of recognition under the Ordinance should include any prior challenges to jurisdiction and dismissal of the same. Similarly, if a party has submitted to the jurisdiction to a foreign court or arbitral tribunal without challenge, this should also be noted in the affidavit to strengthen the application.
- If matters become contested, a judgment creditor may be well advised to take out an additional application for security for costs or an order that interim payment be made in court to safeguard the judgment creditor’s interests pending contested litigation in HK.
- Enforcement proceedings in arbitral awards are held in chambers (not open to the public). A judgment creditor may seek further anonymity and/or confidentiality by seeking orders that the arbitral award be kept sealed and confidential.



### Nick Gall

Gall  
3/F Dina House, Ruttonjee Centre  
11 Duddell Street, Central  
Hong Kong

Tel: +852 3405 7688  
Email: [nickgall@gallhk.com](mailto:nickgall@gallhk.com)  
URL: [www.gallhk.com](http://www.gallhk.com)

Nick has acted for publicly listed companies, senior employees, the Hong Kong Government, the US Government, major international banks and corporations throughout the world.

He has extensive experience in dealing with multi-jurisdictional fraud and international asset tracing litigation. His work often requires making cross-border applications, freezing/gagging applications, urgent injunctive relief, the examination of senior executives/bank officers and recovery and enforcement proceedings generally. He also has extensive experience in forcing banks and financial institutions to provide information to assist in tracing and recovery of funds and fending off vulture funds in respect of international sovereign debt recoveries.

In 2009, 2010 and 2011 Nick was named as one of the Hot 100 Lawyers in Asia, by Asian Legal Business, the leading Asian journal aimed at the legal profession. The Hot 100 is an annual list of the top one hundred lawyers in Asia who have performed exceptionally in their fields. He was also nominated in 2012 and 2013 for Managing Partner of the Year by the same publication.

Nick has been named by *Legal 500 Asia Pacific* and by *Chambers Asia Pacific* as a Leading Individual in the Dispute Resolution category from 2011–2015. He has also consistently ranked in the Benchmark Asia Pacific awards, *Asialaw's* Leading Lawyer, *ALB* Hong Kong Law Awards and *Who's Who Legal Asset Recovery*.



### Stephen Chan

Gall  
3/F Dina House, Ruttonjee Centre  
11 Duddell Street, Central  
Hong Kong

Tel: +852 3405 7688  
Email: [stephenchan@gallhk.com](mailto:stephenchan@gallhk.com)  
URL: [www.gallhk.com](http://www.gallhk.com)

Stephen regularly acts for multi-national corporations in Hong Kong-based commercial litigation and international arbitration matters. He has extensive experience in Mareva (freezing) injunctions, tracing and recovery of funds. He also advises US Magic Circle firms and other large foreign firms in the enforcement of foreign judgments in Hong Kong.

Stephen recently acted against a major bank in establishing and developing the *anti-avoidance* principle in employment law, the first substantive decision of its kind in Hong Kong and the common law jurisdiction.

Stephen is an experienced advocate having appeared in the District Court, High Court and various specialist Tribunal proceedings in both Hong Kong and New Zealand.

Gall is a leading independent Hong Kong law firm focusing primarily on dispute resolution. As a specialist in handling highly complex disputes, Gall is frequently called upon to act on multi-jurisdictional litigation.

As a local independent dispute resolution practice, Gall is largely free of commercial conflict issues and has regularly worked with leading international law firms. Gall is also trusted by Magic Circle and City firms to act for their clients where they are unable to act owing to conflicts of interest.

With a core team of experienced partners, assistants and support staff, Gall delivers a hands-on, quality service to plaintiffs and defendants alike.

## Current titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Recovery & Insolvency
- Corporate Tax
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks

**glg** global legal group

59 Tanner Street, London SE1 3PL, United Kingdom  
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255  
Email: [sales@glgroup.co.uk](mailto:sales@glgroup.co.uk)

[www.iclg.co.uk](http://www.iclg.co.uk)