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Common tools include:

- (a) Injunctions prohibiting the intended defendants from dealing with, or disposing of, assets up to the claimed amount, or specific assets over which the plaintiffs allege to have a proprietary claim, in Hong Kong or worldwide; and
- (b) Norwich Pharmacal Orders, which compel a third party to disclose information and documents.

Insolvency and bankruptcy

Insolvency and bankruptcy proceedings are collective proceedings. Unlike other civil disputes, these proceedings not only involve parties in the proceedings, but also other stakeholders who are interested in the estate of the bankrupt, or insolvent companies. They have their own procedural rules, and civil procedural rules do not directly apply.

The principle of modified universalism, which aims to have unitary bankruptcy proceedings in the court of the domicile of the bankrupt or insolvent entities receive worldwide recognition at the same time as taking into consideration local law and public policy, has been recognised and applied in Hong Kong.

While the law is still developing, the Hong Kong Courts are, in general, willing to provide assistance and recognise the appointment of liquidators in other jurisdictions, but would also look into the effect on local creditors if such appointment is recognised or assistance is provided.

The mainland and the HKSAR have signed an arrangement for mutual recognition and assistance to bankruptcy (insolvency) proceedings between the Courts of the mainland and the HKSAR, which demonstrates the efficiency and power of “One Country, Two Systems”, making it even more convenient for the two jurisdictions to work together and achieve modified universalism in insolvency proceedings.

Arbitration-friendly attitude

Hong Kong supports arbitration, and the UNCITRAL Model Laws have been adopted and formed part of the Arbitration Ordinance.

If the courts find an arbitration agreement governing the disputes of the parties, the legal action will likely be stayed at the request of any party.

In terms of enforcement of arbitral awards, a simple and easy regime has been developed, and there are only very limited circumstances for parties to set aside arbitral awards.

Legal costs

In general, the losing party has to pay the costs incurred by the winning party. There are different scales for the court to assess the amount to be recovered, but these don't involve full reimbursement.

Contingency fee arrangements are generally prohibited in Hong Kong, though this isn't universal.

Normally, foreign plaintiffs or corporate plaintiffs without assets in Hong Kong are ordered to provide security for defendants' costs by way of making a payment to the court. Counterclaiming plaintiffs may in certain circumstances be required to provide security as well.

To encourage out-of-court settlements, various measures have been implanted into the civil procedural rules which may lead to costs consequences. For instance, while mediation isn't compulsory, the court has the power to impose adverse costs consequences if the parties unreasonably fail to attempt mediation.

Kenix Yuen joined Gall in 2013 and specialises in cross-border commercial litigation and international arbitrations (in particular, involving elements of the People's Republic of China (PRC)) spanning contractual disputes, shareholders' disputes, directors' duties, fraud and asset tracing, misrepresentation and mis-selling claims.

She is also experienced in advising on regulatory investigations conducted by the Securities and Futures Commission and Regulatory Enquiries from the Insurance Agents Registration Board.

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Gall is a leading independent Hong Kong law firm focusing primarily on dispute resolution. The firm specialises in handling highly complex disputes, many of which involve multi-jurisdictional litigation.

Commercial litigation in Hong Kong: what you need to know

As an international financial centre, Hong Kong sees a large volume of cross-border transactions, and as a result, cross-border commercial disputes inevitably occur. Given Hong Kong's proximity to (and close connection with) mainland China, the Courts of the HKSAR and legal professionals have significant experience in resolving cross-border commercial disputes involving mainland elements.

Hong Kong has therefore been supported by the Central Government to establish itself as a centre for international legal and dispute resolution services in the Asia Pacific Region.

Unique features of Hong Kong's legal system

Hong Kong is a common law jurisdiction. For historical reasons, English precedents before 1997 still have a binding effect in Hong Kong, unless they have been overruled by other decisions in the Courts of the HKSAR.

Article 85 of the Basic Law also permits the Courts of the HKSAR to refer to precedents in other common law jurisdictions.

Chinese and English are the official languages in Hong Kong. Although

parties can choose to litigate in either language, bilingual judges are nevertheless limited. Given the increase in cases involving evidence in Chinese, parties may have to pay translation costs in order to avoid the waiting time by requesting a bilingual judge.

Also akin to the English system, the profession is still divided into solicitors and barristers who have different skill sets and roles to play in litigation. There are also Hong Kong lawyers qualified to practise PRC law for a limited scope of work in the Greater Bay Area.

Stages in civil proceedings

Like most other common law jurisdictions, civil litigation in Hong Kong typically involves the following stages:

- Pleadings
- Discovery
- Exchange of Witness Statements
- Trial.

Jury trials are also available for defamation cases. During the discovery phase, parties to the litigation must disclose all relevant documents in their possession, power, or custody, regardless of whether the documents may prejudice their case or not.

Given this obligation, parties are subject to an implied undertaking not to use the documents disclosed for purposes other than legal action.

Common tools in commercial litigations in aid of foreign proceedings

Under Hong Kong law, courts have the power to grant stand-alone interim measures to assist foreign litigation or arbitration, before or after foreign proceedings have commenced.

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