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# Enforcement of Judgments

Hong Kong  
Gall

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# 2019

## Law and Practice

*Contributed by Gall*

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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. Gall's partners have a wealth of experience in a wide variety of litigation, mediation and arbitration. Its core practice areas include: commercial litigation, fraud and asset tracing, employment disputes, insolvencies, obtaining emergency injunctive relief remedies, regulatory and criminal matters, family matters and China-

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## 1. Identifying Assets in the Jurisdiction

### 1.1 Options to Identify Another Party's Asset Position

There are various options presently available in Hong Kong to identify the asset position of another party by conducting the following public searches either in person or online at the relevant departments of Hong Kong:

- business registration search at the Inland Revenue Department;
- company search (including directorship search) at the Companies Registry;
- land search at the Land Registry;
- trade mark registration search at the Trade Marks Registry; and
- vehicle search at the Transport Department.

Apart from the above publicly available information, freezing orders and ancillary asset disclosure orders are also available by making applications with basis to Hong Kong courts.

A party can also instruct private investigators or external companies to compile search reports which would comprise information which is not publicly available through their own database. For example, a party can instruct them to conduct (i) a landed property transaction search to determine if a party has been involved in any landed property

transactions in Hong Kong, so that the relevant land search can be conducted against the property identified to ascertain if the party owns such property, and (ii) a marriage search to identify the name of a party's spouse if there is any suspicion that the spouse is holding any assets for such party.

## 2. Domestic Judgments

### 2.1 Types of Domestic Judgments

The following types of domestic judgments are available in Hong Kong.

#### Default Judgment

A default judgment is a judgment without a trial. It is available where a defendant has failed to file an acknowledgment of service or a defence. It applies where the claim is for liquidated damages, unliquidated damages, detention of goods or possession of land, but not where the claim is not squarely within the four types above.

#### Summary Judgment

A summary judgment is a judgment without a trial. It is available where a defendant has no defence to a claim. It applies to every action begun by writ other than (i) an action which includes a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment or seduction, (ii) an

action which includes a claim by the plaintiff based on an allegation of fraud, (iii) an Admiralty action in rem.

## Final Judgments

A final judgment can be obtained for all types of actions, including but not limited to a claim for a specified amount of money, injunctive relief, specific performance or declaratory relief.

## 2.2 Enforcement of Domestic Judgments

The following options and procedures are generally available and involved for enforcing a domestic judgment in Hong Kong.

### Charging Order

This is a court order which imposes a charge on any property or securities owned by the judgment debtor to secure the payment of the judgment debt. An application for a charging order involves two stages: (i) Charging Order Nisi on ex parte basis (ie, without notice to the other party); and (ii) Charging Order Absolute on inter partes basis (ie, the other party is notified of the hearing).

First, the judgment creditor may apply ex parte with a supporting affidavit to a Master in Chambers for an order to show cause. The Charging Order Nisi granted shall then be registered immediately with the Land Registry if the charging order is over a landed property, in order to put any third party on notice of the same. A sealed copy of the Charging Order Nisi which specifies the hearing time and date of the return date hearing for further consideration shall then be served on the judgment debtor.

At the inter partes hearing stage, a Master in Chambers will determine if the Charging Order Nisi should be made absolute. The Charging Order Absolute granted should be immediately registered against the landed property with the Land Registry.

### Examination Order

The judgment debtor will be cross-examined on oath by the Registrar or such officer as the court may appoint to obtain information on his assets. The judgment creditor may apply ex parte with a supporting affidavit to a Master in Chambers. A sealed copy of the Order (which is endorsed with a penal notice stating that if the judgment debtor fails to attend the examination without good cause, the judgment debtor may be arrested and brought before the court for examination) shall be personally served on the judgment debtor ordered to attend the examination. The oral examination will usually be heard by a Master in open court.

### Writ of Execution and FIFA

A bailiff will seize and sell the judgment debtor's property to repay the judgment debt. The judgment creditor shall first issue a writ of execution; examples of such writ include a writ

of fieri facias – FIFA (to obtain the judgment debt), a writ of possession (to obtain repossession of the land), a writ of delivery (for the delivery of goods), and a writ of sequestration (to enforce judgments that require a person to perform an act within a specified time or abstain from performing any act). For certain writs of execution, the judgment creditor must apply for leave before issuing the same. After the writ of execution is issued, the judgment creditor is required to make appointment with the Bailiff Office of the Bailiff Section to arrange execution. In case of a FIFA, the bailiff may seize the goods and chattels on the judgment debtor's premises to repay the judgment debt.

### Garnishee Proceedings

This requires a third party (usually a bank) which owes money to the judgment debtor to pay the money owed directly to the judgment creditor. An application for a garnishee order involves two stages – (i) Garnishee Order Nisi on ex parte basis, and (ii) Garnishee Order Absolute on inter partes basis.

First, the judgment creditor may apply ex parte with a supporting affidavit to a Master in Chambers. A sealed copy of the Garnishee Order Nisi which specifies the hearing time and date shall then be served on the judgment debtor.

At the inter partes hearing, a Master in Chambers will determine if the Garnishee Order Nisi should be made absolute. The bank will be ordered to pay the money held in the judgment debtor's account(s) directly to the judgment creditor.

### Winding up/Bankruptcy Proceedings

This will wind-up the judgment debtor company or bankrupt an individual judgment debtor so that the trustee-in-bankruptcy or liquidator (as the case may be) is empowered to look into the assets and affairs of the judgment debtor.

To commence winding-up/bankruptcy proceedings, the most common ground is to demonstrate that the judgment debtor is insolvent by issuing a statutory demand demanding payment within 21 days, failing which, the judgment creditor may proceed to present a petition. The court will hear the petition and if satisfied, grant a winding-up/bankruptcy order. The trustee-in-bankruptcy or liquidator shall be appointed to administer and look into the affairs and assets of the bankrupt, and to distribute the assets to repay the debts according to the priority of the unsecured creditors based on the proof of debt.

### Stop Order

Where a judgment creditor is entitled to funds in court, a Stop Order will prohibit the transfer, sale, delivery out, payment or other dealing with such funds, or any part thereof, or the income thereon.

Where a judgment creditor has an interest in the judgment debtor's securities, a Stop Order will prohibit the registration of a transfer of such securities, the payment of any dividend or interest in respect thereof, and in the case of a unit trust, any acquisition of, or other dealing with the units by any person or body exercising functions under the trust.

An application for a Stop Order must be made by summons in the cause or matter relating to the funds in court (ie, in pending proceedings), or, if there is no such cause or matter, by originating summons. The summons must be served on every person whose interest may be affected by the Order.

#### **Stop Notice**

Where a judgment creditor has an interest in the judgment debtor's securities, a Stop Notice will enable the judgment creditor to be notified of any proposed transfer or payment of such securities. As long as the Stop Notice has been served and is in force, the entities on which it is served shall not register a transfer of the securities or take any other steps restrained by the Stop Notice until 14 days after sending notice thereof to the judgment creditor.

An application for a Stop Notice can be made by filing a notice in the prescribed form with a supporting affidavit. The applicant must then serve an office copy of the affidavit, and a copy of the notice sealed by the court:

- in the case of stock of any body incorporated within Hong Kong, on that body;
- in the case of stock of any body incorporated outside Hong Kong, being stock registered in a register kept in Hong Kong, on the keeper of the register; or
- in the case of units of any unit trust in respect of which a register of unit-holders is kept in Hong Kong, on the keeper of the register.

#### **2.3 Costs and Time Taken to Enforce Domestic Judgments**

The costs involved and length of time it takes to enforce a domestic judgment depend on the enforcement action(s) to be taken and whether enforcement is contested. Generally, it would take at least three months at a cost of at least HKD100,000 for an uncontested enforcement action.

#### **2.4 Post-judgment Procedures for Determining Defendants' Assets**

The defendant/judgment debtor can be cross-examined under oath to obtain information on what assets he/she holds and where they are located. In addition, where the judgment debtor is wound-up or bankrupt, the liquidator or the trustee in bankruptcy will investigate the assets and affairs of the judgment debtor.

#### **2.5 Challenging Enforcement of Domestic Judgments**

A defendant may challenge summary or final enforcement by appealing the judgment and seeking a stay of enforcement. A defendant may challenge enforcement by seeking to set aside the default judgment on the following grounds:

- the defendant was not validly served with the proceedings (eg, a defendant was not physically in Hong Kong when the proceedings were served on him, or the proceedings were not served on him at his usual or last known address, or the proceedings have been returned to the plaintiff through the post undelivered to the addressee);
- the judgment was entered against a person who was dead or against a company which was dissolved or struck off the Companies' Register at the material time;
- the default judgment has been entered before the expiry of the prescribed time limit for the defendant to serve the acknowledgment of service or the defence;
- where leave is required to enter a default judgment in exceptional cases (eg, against the Government of the Hong Kong Special Administrative Region – SAR), such leave has not been obtained;
- the judgment was obtained by fraud;
- the Hong Kong Courts have no jurisdiction over the dispute.

#### **2.6 Unenforceable Domestic Judgments**

Generally, all types of domestic judgments can be enforced.

#### **2.7 Register of Domestic Judgments**

There is no central register of all judgments in Hong Kong. Certain (reported and unreported) judgments are publicly available online on the website of the Hong Kong Judiciary and/or by subscribing to other paid online platforms such as LexisNexis; the Court Libraries, and the Law Libraries at certain universities in Hong Kong would also have hard copies of the judgments.

The judgment generally contains the action number, the names of the parties, the date of the hearing, the date of the judgment, the background of the case, the issues in dispute, the submissions made by the parties and the decision made.

Even after a judgment debtor has paid what is owed, he/she is unable to remove the judgment, and the judgment would remain searchable.

### **3. Foreign Judgments**

#### **3.1 Legal Issues Concerning Enforcement of Foreign Judgments**

Hong Kong is not a party to any international treaties/conventions relevant to the enforcement of foreign judgments

(such as the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters).

In order for a foreign judgment to be enforced in Hong Kong, it must be registrable under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319) (FJREO) or recognised under the common law.

In order for a judgment granted by a court in the mainland (ie, any part of China other than Hong Kong, Macau and Taiwan) to be enforced in Hong Kong, it must be registrable under the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap 597) (MJREO).

## FJREO

For a foreign judgment to be registrable under the FJREO:

- the judgment must be from a superior court of a designated country which has reciprocal arrangements with Hong Kong (ie, Australia, Austria, Belgium, Bermuda, Brunei, France, Germany, India, Israel, Italy, Malaysia, New Zealand, Singapore, Sri Lanka and The Netherlands);
- the recognition application must be made within six years of the date of the original judgment, or where there have been proceedings by way of appeal against the judgment, after the date of the last judgment;
- the judgment must not have been wholly satisfied;
- 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;
- the judgment must be enforceable by execution in the country of the original court;
- the judgment is final and conclusive as between the parties thereto; and
- the judgment is for a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty.

## MJREO

For a foreign judgment to be registrable under the MJREO:

- the judgment must be from the Supreme People's Court, any higher or intermediate people's court or certain recognised primary people's courts;
- the judgment is in relation to a commercial contract and was given after 1 August 2008;
- the parties to the commercial contract had a written agreement made after 1 August 2008 specifying that the courts in the mainland China have exclusive jurisdiction over the dispute;
- the judgment is enforceable in the mainland;
- the judgment is final and conclusive; and

- the judgment is for a definite sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty.

## Common Law

If a foreign judgment is not from the above-mentioned countries and is therefore not registrable under either the FJREO or the MJREO, the only recourse is for it to be recognised under the common law, provided that:

- the judgment is final and conclusive upon the merits of the claim in the foreign jurisdiction; and
- the judgment is for a fixed sum of money.

## 3.2 Variations in Approach to Enforcement of Foreign Judgments

Only those types of judgments which can be registered under FJREO or MJREO or recognised under the common law are enforceable in Hong Kong. Other types of judgments cannot be enforced. Please refer to **3.3 Categories of Foreign Judgments Not Enforced**, below, for the categories of foreign judgments which cannot be enforced in Hong Kong.

### 3.3 Categories of Foreign Judgments Not Enforced

Under the FJREO and the common law, only final money judgments can be enforced.

Under the MJREO, only final money judgments in relation to a commercial contract can be enforced.

Other categories of foreign judgments will not be enforced. For example, a foreign Mareva injunction order is not enforceable because it is interlocutory rather than final and so is a foreign order for specific performance because it is not a money judgment. In addition, judgments for a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty will not be enforced.

### 3.4 Process of Enforcing Foreign Judgments

For a foreign judgment to be registrable under the FJREO, an application may be made ex parte upon supporting affidavit and draft order to a Master in the Hong Kong Court of First Instance (CFI). However, the court may direct a summons to be issued, in which case the summons shall be an originating summons. If the judgment is registered, the notice of registration should be served on the judgment debtor. Similarly, for a foreign judgment to be registrable under the MJREO, an application may be made ex parte upon supporting affidavit and draft order to a Master in the CFI. However, the court may direct a summons to be issued, in which case the summons shall be an originating summons. If the judgment is registered, the notice of registration should be served on the judgment debtor.

For a foreign judgment to be recognised under the common law, fresh proceedings by way of Writ of Summons must be

issued in the CFI based on the judgment. A Statement of Claim is usually indorsed with the Writ of Summons. If the defendant fails to file the Acknowledgement of Service, the plaintiff may proceed to obtain default judgment.

If, however, the defendant (judgment debtor) has filed an Acknowledgment of Service, the plaintiff (judgment creditor) may apply for summary judgment by issuing an inter partes summons with a supporting affidavit. The defendant may file an affidavit in response and the plaintiff may file an affidavit in reply. The court will then decide whether the defendant has no defence to the claim for enforcement.

Once a foreign judgment is registered or recognised in Hong Kong, it can be enforced in the same manner as a Hong Kong judgment; for the options, please refer to **2.2 Enforcement of Domestic Judgments**, above.

### 3.5 Costs and Time Taken to Enforce Foreign Judgments

Generally, an application under the FJREO or MJREO takes around two to four months, whereas an application under the common law takes around six to 12 months, on the basis that it is uncontested.

Garnishee proceedings are more efficient than the other enforcement methods in the circumstances that there is sufficient money in the debtor's bank account.

### 3.6 Challenging Enforcement of Foreign Judgments

The options available to challenge enforcement of a foreign judgment differ depending on the applicable legislation or law under which it is registered or recognised.

#### FJREO

Under the FJREO, the registration of a foreign judgment can be set aside on the following grounds:

- the requirements for registration under the FJREO were not met – for example, the foreign judgment is not final and/or conclusive;
- the foreign court giving the judgment had no jurisdiction;
- the judgment debtor did not receive notice of the foreign proceedings in sufficient time and did not appear;
- the judgment was obtained by fraud;
- the enforcement of the foreign judgment is contrary to public policy in Hong Kong;
- the rights under the judgment are not vested in the person who made the application for registration; or
- the limitation period for a foreign judgment to be registered under the FJREO (being six years) has lapsed.

#### MJREO

Under the MJREO, the registration of a foreign judgment can be set aside on the following grounds:

- the requirements for registration under the MJREO were not met – for example, the foreign judgment is not final and/or conclusive;
- the relevant choice of the mainland court agreement is invalid under the law of the mainland unless the original court has determined that the agreement is valid;
- the judgment has been wholly satisfied;
- the Hong Kong courts have exclusive jurisdiction over the case according to the law of Hong Kong;
- the judgment debtor who did not appear in the original court to defend the proceedings was not summoned to appear according to the law of the mainland, or was so summoned but was not given sufficient time to defend the proceedings according to the law of the mainland;
- the judgment was obtained by fraud;
- a judgment on the same cause of action between the parties to the judgment has been given by a court in Hong Kong or an arbitral award on the same cause of action between the parties has been made by an arbitration body in Hong Kong;
- a judgment on the same cause of action between the parties to the judgment has been given by a court in a place outside Hong Kong or an arbitral award on the same cause of action between the parties has been made by an arbitration body in a place outside Hong Kong, and the judgment or award has already been recognised in or enforced by the courts in Hong Kong;
- the enforcement of the judgment is contrary to public policy in Hong Kong;
- the judgment has been reversed or otherwise set aside pursuant to an appeal or a retrial under the law of the mainland; or
- the limitation period for a foreign judgment to be registered under the MJREO (being two years) has lapsed.

#### Common Law

- the foreign court giving the judgment had no jurisdiction according to the rules of private international law;
- the judgment was obtained by fraud or in breach of natural justice;
- the judgment is inconsistent with a previous Hong Kong judgment or a foreign judgment which can be recognised in Hong Kong;
- the enforcement of the judgment is contrary to public policy in Hong Kong; or
- the limitation period for a foreign judgment to be recognised under the common law (being six years) has lapsed.

## 4. Arbitral Awards

### 4.1 Legal Issues Concerning Enforcement of Arbitral Awards

The following principles set out in *KB v S* [2015] HKEC 2042 apply generally in relation to enforcing an arbitral award in Hong Kong:

- the primary aim of the court is to facilitate the arbitral process and to assist with enforcement of arbitral awards;
- under the Arbitration Ordinance (AO) (Cap 609), the court should interfere in the arbitration of the dispute only as expressly provided for in the AO;
- subject to the observance of the safeguards that are necessary in the public interest, the parties to a dispute should be free to agree on how their dispute should be resolved;
- enforcement of arbitral awards should be “almost a matter of administrative procedure” and the courts should be “as mechanistic as possible” (*Re PetroChina International (Hong Kong) Corp Ltd* [2011] 4 HKLRD 604);
- the courts are prepared to enforce awards except where complaints of substance can be made good – the party opposing enforcement has to show a real risk of prejudice and show that its rights have been violated in a material way (*Grand Pacific Holdings Ltd v Pacific China Holdings Ltd* [2012] 4 HKLRD 1 (CA));
- in dealing with applications to set aside an arbitral award, or to refuse enforcement of an award, whether on the ground of not having been given notice of the arbitral proceedings, inability to present one’s case, or that the composition of the tribunal or the arbitral procedure was not in accordance with the parties’ agreement, the court is concerned with the structural integrity of the arbitration proceedings – in this regard, the conduct complained of “must be serious, even egregious”, before the court would find that there was an error sufficiently serious so as to have undermined due process (*Grand Pacific Holdings Ltd v Pacific China Holdings Ltd* [2012] 4 HKLRD 1 (CA));
- in considering whether or not to refuse the enforcement of the award, the court does not look into the merits or at the underlying transaction (*Xiamen Xingjingdi Group Ltd v Eton Properties Limited* [2009] 4 HKLRD 353 (CA));
- failure to make prompt objection to the Arbitral Tribunal or the supervisory court may constitute estoppel or want of bona fide (*Hebei Import & Export Corp v Polytek Engineering Co Ltd* (1999) 2 HKCFAR 111);
- even if sufficient grounds are made out, either to refuse enforcement or to set aside an arbitral award, the court has a residual discretion and may nevertheless enforce the award despite the proven existence of a valid ground (*Hebei Import & Export Corp v Polytek Engineering Co Ltd* (1999) 2 HKCFAR 111, 136A-B);

- the Court of Final Appeal clearly recognised in *Hebei Import & Export Corp v Polytek Engineering Co Ltd* that parties to the arbitration have a duty of good faith, or to act bona fide (p 120I and p 137B of the judgment).

### 4.2 Variations in Approach to Enforcement of Arbitral Awards

Hong Kong categorises arbitral awards into convention awards, non-convention awards, mainland awards and Macau awards but the overall approach to enforcement does not vary for different types of arbitral awards. Once leave from the court has been granted to enforce an arbitral award, it can be enforced in the same manner as a Hong Kong judgment, subject to possible challenge to the enforcement as explained in **4.6 Challenging Enforcement of Arbitral Awards**, below.

### 4.3 Categories of Arbitral Awards Not Enforced

There are no specific categories of arbitral awards which will not be enforced in Hong Kong, subject to possible challenge to the enforcement as explained in **4.6 Challenging Enforcement of Arbitral Awards**, below.

### 4.4 Process of Enforcing Arbitral Awards

The first step to enforce an arbitral award would be to obtain leave from the court by way of originating summons. The application may be made on an ex parte basis with an affidavit in support. For ex parte application, the applicant must make full and frank disclosure of all relevant information. Where the court considers it appropriate for the other side to be heard, it may direct that the application be made inter partes. If the application is contested, the court will list the matter to be heard with a date to be fixed.

Once leave from the court has been granted (and in the absence of any application to set aside the order granting leave), a judgment can be entered in terms of the arbitral award, which can then be enforced in the same manner as a Hong Kong judgment and please refer to **2.2 Enforcement of Domestic Judgments**, above.

### 4.5 Costs and Time Taken to Enforce Arbitral Awards

The costs involved and length of time it takes to enforce an arbitral award depend on the enforcement action(s) to be taken and whether enforcement is contested. Generally, it would take at least two to three months for an uncontested enforcement action in order to enforce the arbitral award. In general, garnishee proceedings are more efficient than the other enforcement methods in the circumstances that there is money in the debtor’s bank account.

### 4.6 Challenging Enforcement of Arbitral Awards

Generally speaking, an arbitral award is final under the AO (which applies only where the seating of arbitration is in Hong Kong). There is no automatic right to appeal against an



arbitral award, but in the arbitration agreement, the parties may expressly opt for certain provisions in Schedule 2 to the AO, which provide for the right of the parties to challenge the arbitral award on the ground of serious irregularity or question of law. However, such grounds are unusual and the party seeking to appeal has to meet a very high threshold.

When seeking to set aside an order granting leave for enforcement, such application may be granted in different circumstances, depending on the type of the award. Although different sections in the AO applies to different types of awards, the grounds for refusal of enforcement provided under such sections are either the same or substantially similar (save that for non-convention awards, the court may refuse enforcement of the same if for any other reason the court considers it just to do so). One may make attempt to set aside an order allowing for enforcement of an arbitral award within 14 days after service of such order, but only if he/she can show that:

- a party to the arbitration agreement was under some incapacity;
- the arbitration agreement is not valid;
- the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;
- the award deals with a dispute not governed by the terms of the submission to arbitration, or contains decisions beyond the scope of the submission to arbitration;
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or was not in accordance with the law of the country where the arbitration took place;
- the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made;
- the subject matter of the dispute is not capable of settlement by arbitration under the laws of Hong Kong; or
- the award is in conflict with the public policy in Hong Kong.

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