



## A Short Guide to Civil Litigation in Hong Kong: Q&A

When a dispute over rights and obligations between two parties arises, the parties may commence a civil litigation. At the end of litigation, the Court will determine whether and to what extent a party's rights have been infringed, and the appropriate remedy or compensation that party is entitled to.

Commencing civil litigation may not be as straightforward as one would think though, and the road from commencement to judgment can be long and complicated. In this Q&A, partner **Evelyn Chan** and Trainee Solicitor **Adriel Wong** provide a general overview of Hong Kong's civil litigation process so prospective litigants can be more informed before commencing proceedings.

**Q1.** Which are the various courts in Hong Kong that preside over civil disputes?

**A1.** It will depend upon the nature of the claim, as well as its value. Civil courts in Hong Kong consist of:

1. The District Court;
2. The High Court (Court of First Instance and the Court of Appeal); and
3. The Court of Final Appeal.

### The District Court

The District Court has limited jurisdiction over civil matters (as well as criminal matters). The types of civil claims that it hears include:

- (a) contract, quasi-contract and/or tort claims with a value in excess of HK\$75,000 but not more than HK\$3 million;
- (b) those dealing with buildings or premises (including tenancy cases), the annual rate or rateable value or the annual value of which does not exceed HK\$320,000;
- (c) recovery of less than 12 months of rental arrears only (known as "distress");
- (d) claims in equity (for example, specific performance, dissolution of a partnership and relief against fraud or mistake). Where proceedings do not relate to land, the maximum value involved shall not exceed HK\$3 million. Where proceedings do relate to land, the maximum value involved shall not exceed HK\$7 million (and if the proceeding relate to the recovery of land or title to land, the rateable value of the land must not exceed HK\$320,000;

- (e) matrimonial cases including divorce, maintenance, custody and adoption of children;

## **The High Court**

The High Court comprises of two divisions - the Court of First Instance and the Court of Appeal. The Court of First Instance has unlimited jurisdiction over all civil claims. Common types of civil proceedings in the Court of First Instance include:

- (a) money claims for HK\$3 million or above;
- (b) all other claims falling outside the District Court's jurisdiction;
- (c) claims that are exclusively commenced in the Court of First Instance including judicial review, winding up and bankruptcy; and
- (d) appeals from the Labour Tribunal and the Small Claims Tribunal (on a point of law).

The Court of Appeal hears civil (and criminal) appeals from the District Court and the Court of First Instance, as well as appeals from certain statutory bodies such as the Lands Tribunal.

## **The Court of Final Appeal**

The Court of Final Appeal is the highest appellate court in Hong Kong. It hears appeals at the discretion of the Court of Appeal or the Court of Final Appeal in any civil matter.

In addition to the Courts stated above, there are also a number of tribunals in Hong Kong, including:

- (a) The Small Claims Tribunal which handles civil claims up to HK\$75,000 for contract, quasi contract and tort claims;
- (b) The Labour Tribunal which has jurisdiction over claims arising under the Employment Ordinance;
- (c) The Lands Tribunal which has jurisdiction over various claims relating to land; and
- (d) The Market Misconduct Tribunal which deals with matters relating to market misconduct (for example, insider dealing, false trading and price rigging).

**Q2:** Are there any deadlines for bringing a claim?

**A2:** Limitation periods stipulated under the Limitation Ordinance (Cap. 347) apply. The actual limitation period depends upon the type of case:

- (a) For contract claims (except where the contract is under seal): 6 years from the date of breach of contract.
- (b) For contract under seal claims: 12 years from the date of breach of contract.
- (c) For personal injuries and fatal accidents:
  - i. Personal injury claims: generally 3 years from the date of the accident, or the date of knowledge of the

injury by the plaintiff, whichever is the later.

If the injury occurred in the course of an employee's employment and it is intended that an application be made under the Employee's Compensation Ordinance (Cap. 282), the time limit shall instead be 2 years from the date of occurrence of the accident.

- ii. For fatal accident claims: 3 years from the date of death or the date of knowledge of the death by the deceased's dependent, whichever is the later.

If the fatal accident occurred in the course of an employee's employment and it is intended that an application be made under the Employee's Compensation Ordinance, the time limit shall instead be 2 years from the date of death, or prior to the determination made by the Commissioner for Labour as to the payable compensation in respect of the death.

- (d) For actions to recover possession of land: 12 years from the date on which the right of action accrued to the plaintiff or to a person through whom the plaintiff claims. The right of action is deemed to have accrued on the date the plaintiff is dispossessed of his land or has his possession discontinued.
- (e) For other tort claims: 6 years from the date of the tort.

Under exceptional circumstances, the above limitation periods may be extended. For instance, time does not begin to run for a disabled claimant until he ceases to be under a disability or has died. Similarly, where the action involves an element of fraud or concealment, time does not begin to run until the plaintiff has discovered the fraud, concealment or mistake, as the case may be.

**Q3:** How are civil court claims commenced?

**A3:** There are 4 prescribed modes to commence proceedings: (1) writ of summons, (2) originating summons, (3) originating motion, and (4) petition. Originating motions are appropriate for certain types of actions such as appeals, whereas petitions are for applications for the winding up of a company, a bankruptcy order, the questioning of an election, or certain matrimonial-related issues. The vast majority of actions are brought by way of writ of summons or originating summons.

Where the action is commenced by a writ, a Statement of Claim, setting out the details of the plaintiff's claim, can be served together with the writ or alternatively at a later date (after the defendant acknowledges service of the writ and disputes the claim). If the plaintiff decides to file and serve the Statement of Claim at a later date, the writ must be indorsed with an Indorsement of Claim. It is important to note that the Statement of Claim, like all pleadings, should be verified with a statement of truth, which may be filed at a later date but as soon as possible.

**Q4:** What are the next steps after the issuance of the writ or the originating summons?

- A4:**
- (a) After the writ / originating summons has been issued, it must be served on the defendant within 12 months unless an extension has been obtained from the court. The writ of summons should be accompanied by 3 copies of the acknowledgment of service form. Service on a Hong Kong defendant who is an individual may be effected by personal service, by registered mail, or by insertion into the defendant's letter box.
  - (b) After the writ (either with or without an accompanying Statement of Claim) / originating summons has been served, the defendant has 14 days (inclusive of the day of service of the writ / originating summons) to file an acknowledgment of service indicating whether he/she intends to defend the claim.

- (c) If no Statement of Claim is served together with the writ, the plaintiff must file and serve the Statement of Claim within 14 days after the date on which the defendant files the acknowledgment of service form indicating an intention to defend the action.
- (d) If the writ is served with the Statement of Claim, and the defendant files an acknowledgment of service indicating that he/she intends to contest the claim, then within 28 days following the expiry of the time limit for the defendant to file an acknowledgment of service, the defendant must file and serve on the plaintiff his Defence to the plaintiff's claim (and a counterclaim, if any).
- (e) If the Statement of Claim is served following the filing of the acknowledgement of service, then within 28 days after the date on which the Statement of Claim is served on the defendant, the defendant must file and serve his/her defence on the plaintiff (and his/her counterclaim, if any).
- (f) After the defence is served, the plaintiff may file a reply to the defence within 28 days. If the defendant files a counterclaim, and the plaintiff wishes to dispute it, the plaintiff should file a defence to the counterclaim within 28 days after the counterclaim is served.
- (g) In the event that (i) the defendant fails to file the acknowledgement of service within the prescribed time period, (ii) the defendant fails to file a Defence within the prescribed time period, or (iii) the plaintiff fails to file a Defence to the Counterclaim within the prescribed time period, the other party can apply to court for judgment in default. If the undefended claim is related to a debt or liquidated damages where the amount of the claim is fixed and ascertainable, the claiming party may enter judgment for the amount claimed together with his/her legal costs. Where the claim is for unliquidated damages, an interlocutory judgment will be entered and the plaintiff will still need to have the court assess the amount of damages.

**Q5:** Is it possible to obtain early judgment in any other way?

**A5:** If the defendant's Defence is not credible (and the matter is relatively straightforward), the plaintiff can apply for summary judgment. The defendant may contest an application for summary judgment. If it is successfully contested the matter will proceed to trial. However, if the application for summary judgment is successful, the applicant will be awarded judgment in the matter.

**Q6:** If there is no early judgment, what happens after the filing and service of the Defence or the Reply, if filed/served (called the 'close of pleadings')?

**A6:** After the close of pleadings, parties must provide to each other a list of documents describing the documents in its possession, custody, or control. Documents that are considered to be privileged should still be listed, although inspection may be refused on grounds of privilege.

A hearing (the 'directions hearing') will take place before the court so that the court can give appropriate directions to the parties to prepare for trial. At the hearing, the parties will be directed to file and exchange the lists of relevant documents in their possession or control and exchange witness statements within a specified period of time. The necessity for any experts' reports will be considered, with directions for them to be filed and exchanged within a specified period of time if applicable. Once all the directions of the court are complied with, the case may be ready for trial.

**Q7:** Is it possible to settle the matter before trial?

**A7:** Parties are encouraged to engage in mediation. If a party unreasonably refuses to attempt mediation, that court can

make an adverse costs order against that party. Even if settlement is not reached during a mediation, parties can still agree to settle at any time up to the conclusion of the trial.

**Q8:** What is mediation?

**A8:** Mediation is a voluntary dispute resolution process conducted by a mediator. The mediator is usually legally qualified and he/she assists and encourages the parties to reach a settlement. He/she cannot compel a settlement, rather the parties retain control of the process and the decisions. The mediation is informal and the process is confidential. A mediation typically lasts for a half-day or a full day, depending upon the complexity of the matter.

**Q9:** What happens if I win at trial and the judgment is in my favour?

**A9:** In many cases that will be the conclusion of the matter and, for example, where the judgment is in respect of a sum of money, the losing party pays the judgment sum to the winning party. However, unfortunately, this is not always the case and the winning party (the judgment creditor) may need to enforce the judgment against the losing party (the judgment debtor). There are a number of potential methods of enforcing a judgment against the judgment debtor, including:

- (a) If the judgment debtor is a company, the judgment creditor may issue a petition to wind up the judgment debtor. If the judgment debtor is an individual, the judgment creditor may petition to declare the judgment debtor bankrupt.
- (b) If the judgment debtor is a creditor to another person, for example, a bank, the judgment creditor may commence garnishee proceedings where the third party would be obliged to pay the debt directly to the judgment creditor in satisfaction (or partial satisfaction, as the case may be) of the judgment.
- (c) The judgment creditor may apply for the judgment debtor to be examined before the court regarding any debts owing to the judgment debtor and any assets owned by the judgment debtor.
- (d) The judgment debtor may apply for a prohibition order which prohibits the judgment debtor from leaving Hong Kong.
- (e) The judgment debtor can apply for a writ of execution / fieri facias directing the bailiff to seize and sell the judgment debtor's goods and chattels to satisfy the judgment debt.

**Q10:** Can I enforce my Hong Kong judgment in other jurisdictions? [See Q12 / A12 in respect of PRC]

**A10:** Judgments of the High Court, Court of Appeal and Court of Final Appeal can be enforced (a) in most common law jurisdictions, and (b) in a number of countries including Belgium, France, Germany, Italy, Austria, the Netherlands and Israel due to international agreements and arrangements.

**Q11:** Can I enforce my foreign judgment in Hong Kong? [See Q12 / A12 in respect of PRC]

**A11:** Pursuant to the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319A), an application can be made to the Hong Kong Court to register a foreign judgment for the payment of debt obtained in the superior court of a country specified in the Ordinance. Once leave is granted to register, the foreign judgment can be enforced in the same way as a Hong Kong judgment. Under the Ordinance, there are 15 designated countries, namely Australia, Bermuda, Brunei, India, Malaysia, New Zealand, Singapore, Sri Lanka, Belgium, France, Germany, Italy, Austria, the Netherlands and Israel.

If the foreign judgment is not from a country listed under the Ordinance and therefore cannot be registered, it can only be enforced at common law. In this case, the foreign judgment will form the basis of a cause of action and the judgment will be treated as a debt between the parties. To be enforceable at common law, there are the following requirements:

- (a) The foreign judgment must be for a debt or a definite sum of money, and the defendant must have submitted to the jurisdiction of the foreign court;
- (b) The foreign judgment was final and conclusive;
- (c) The foreign judgment was not obtained by fraud, and was obtained against the same defendant;
- (d) The foreign judgment was not contrary to Hong Kong rules of public policy or notions of natural justice;
- (e) The foreign court had jurisdiction over the defendant according to Hong Kong rules; and
- (f) An action in Hong Kong based on a foreign judgment must be brought within 12 years from the date on which the foreign judgment became enforceable.

**Q12:** Can I enforce my Hong Kong judgment in the PRC / enforce my PRC judgment in Hong Kong?

**A12:** The enforcement of PRC judgments is governed by the “Arrangement on Reciprocal Enforcement of Judgments in Civil and Commercial Matters” and the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597). The Ordinance makes provision for mutual enforcement in Hong Kong and the PRC judgments in civil or commercial matters and applies to the enforcement of money judgments on disputes arising out of commercial contracts.

In order to register a PRC judgment in Hong Kong:

- (a) the judgment must be from a court which is a designated court under the Ordinance (i.e. courts at the Intermediate People’s Court Level or above and specified Basic Level People’s Courts);
- (b) the judgment must be final and conclusive and enforceable in the PRC;
- (c) the judgment must order the payment of a sum of money (not being a sum payable in respect of taxes, fines or penalties); and
- (d) the application must be made within 2 years from the date of the judgment.

In order to register a Hong Kong judgment for enforcement in the PRC, the judgment creditor has to register both the Hong Kong judgment and a certificate that the judgment is enforceable in Hong Kong.

For enforcement to take place pursuant to the “Arrangement on Reciprocal Enforcement of Judgments in Civil and Commercial Matters”, there must be an agreement between the parties exclusively specifying a court of the Mainland or Hong Kong as having jurisdiction to determine disputes. It is worth noting that a new judicial arrangement is being entered into between the judicial authorities, under which the “sole jurisdiction agreement” requirement will no longer be necessary. This new arrangement was signed in January 2019 but is yet to be formally implemented.

**Q13:** Does the winner recover their legal expenses / other costs?

**A13:** Whilst costs (for example, solicitor’s and barrister’s fees) can be awarded at any stage of the proceedings, usually costs are awarded to the winner at the conclusion of the matter. Note however that, in reality, the winning party will only recover between 40% to 60% of the actual costs incurred after taxation.

**Q14:** What if the plaintiff ordinarily resides outside of Hong Kong – are there any mechanisms to ensure that I will receive the costs awarded to me if I win?

**A14:** In these circumstances, the defendant can apply to court during the course of the proceedings to require the

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plaintiff to provide security for costs. For these purposes, the court will consider:

- (a) the plaintiff's prospects of success;
- (b) whether the defendant has an arguable defence to the plaintiff's claim;
- (c) whether an order for security for costs would stifle the plaintiff's claim;
- (d) whether the plaintiff has any assets in the jurisdiction;
- (e) the plaintiff's impecuniosity; and
- (f) whether there was any delay in making the application for the security for costs. Generally speaking, the closer to trial, the greater the prejudice that will be caused to the plaintiff.

If the application is successful, the plaintiff will be required to pay into court a sum equal to the amount likely to be awarded to the defendant in the event that the defendant wins.

**Q15:** I am concerned that the other party will hide or dissipate their assets before I am able to secure judgment against them. Is there anything I can do?

**A15:** In these circumstances, a Mareva injunction can be sought from the Court of First Instance which will restrain a party from dealing with and removing assets out of Hong Kong, up to a certain value. The court can also grant a worldwide Mareva injunction which covers assets inside and outside of Hong Kong. As it is often imperative that the other party is not 'tipped off' to the application, a Mareva injunction is usually obtained ex-parte, or without notice to the other party. When applying for a Mareva injunction, the court will need to be satisfied that:

- (a) the applicant has a good arguable case on the merits;
- (b) there is a real risk that the defendant will dissipate assets;
- (c) it is just and convenient to grant the Mareva injunction; and
- (d) the other party has assets in (or, in the case of a worldwide Mareva, outside) Hong Kong.

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