

# International **Comparative** Legal Guides



## Enforcement of Foreign Judgments **2020**

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

### Fifth Edition

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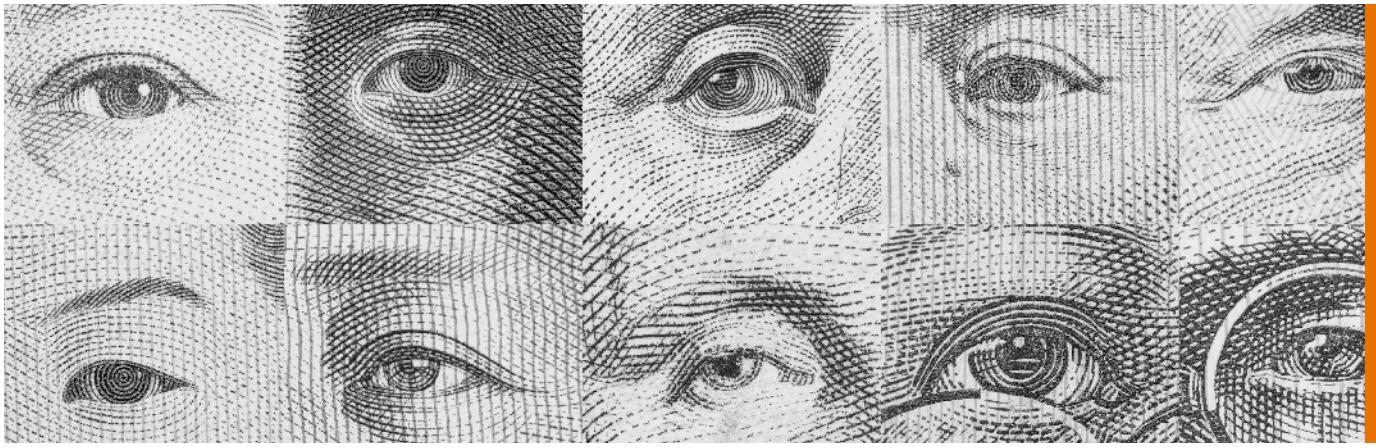
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## Enforcement of Foreign Judgments **2020**

**Fifth Edition**

**Contributing Editors:**

**Louise Freeman & Shivani Sanghi**

**Covington & Burling LLP**

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# Hong Kong



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## 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) (the “FJREO”)	Australia Austria Belgium Bermuda Brunei France Germany India Israel Italy Malaysia The Netherlands New Zealand Singapore Sri Lanka	Section 3
Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) (the “MJREO”)	China (except Macau and Taiwan)	Section 3
Common law	If enforcement of the foreign judgment is not available under the FJREO or the MJREO, the common law regime applies, for example, in case of judgments from the United Kingdom, the United States, etc.	Section 2

## 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?

In the absence of any special statutory regime, a foreign judgment would be recognised and enforced in Hong Kong at common law.

2.2 What constitutes a ‘judgment’ capable of recognition and enforcement in your jurisdiction?

Under common law, there is no specific definition of a ‘judgment’ in relation to the recognition and enforcement of a foreign judgment. Please refer to question 2.3 below for features required in a foreign judgment for it to be capable of recognition and enforcement in Hong Kong under common law.

For the definition of judgment under the FJREO and the MJREO, see question 3.1 below.

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

The requirements that a foreign judgment must satisfy in order to be recognised and enforced in Hong Kong depend on whether any of the relevant statutory regimes apply. Where the FJREO or the MJREO do not apply, the foreign judgment would be recognised and enforced at common law.

### Recognition under common law

For recognition of a foreign judgment under common law, fresh proceedings will need to be commenced based on the foreign judgment by issuing a writ. A foreign judgment may be recognised and enforced if:

1. as per Hong Kong rules, the foreign court had properly exercised jurisdiction over the parties and the subject matter;
2. the judgment is final and conclusive between the parties upon the merits of the claim in the foreign jurisdiction; and

- the judgment is for a fixed sum of money (and is not in the form of a penalty or tax).

#### Enforcement under common law

Once a foreign judgment is recognised under common law, it is *prima facie* enforceable as any other judgment of the Hong Kong court.

#### **2.4 What (if any) connection to the jurisdiction is required for your courts to accept jurisdiction for recognition and enforcement of a foreign judgment?**

Under common law, if the judgment fulfils the requirements for recognition, Hong Kong courts will accept jurisdiction for recognition and enforcement of a foreign judgment.

As far as the jurisdiction of the foreign court is concerned, a judgment creditor must prove that the foreign judgment is a judgment *in personam*. In other words, Hong Kong courts will enforce a foreign judgment in the following cases:

- where the defendant is a subject of the foreign country in which the judgment has been obtained;
- where the defendant was resident in the foreign country when the action began;
- where the defendant in the character of plaintiff has selected the forum in which he or she is afterwards sued;
- where the defendant has voluntarily appeared; and
- where the defendant has contracted to submit him or herself to the forum in which the judgment was obtained.

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

In the context of common law, a foreign judgment is recognised only to the extent that it is a proof for the payment of a liquidated sum of money on which judgment can be given directly by the Hong Kong courts. Where a foreign judgment has been successfully sued upon under common law, it can then be enforced in Hong Kong. The method of enforcement will vary depending on the type of enforcement desired (see question 4.1 below).

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

#### Procedure for recognition under common law

Under common law, a foreign judgment is considered as a debt between the parties and therefore an action can be brought upon it to prove that it is final and conclusive between the parties.

- The judgment creditor of the foreign judgment commences civil proceedings in Hong Kong by way of a writ, which can be generally endorsed or include a statement of claim setting out the details of the debt arising from the foreign judgment.  
The writ must then be served on the defendant. If the defendant either (a) does not state its intention to defend within 14 days, or (b) does not provide a defence within 28 days, the plaintiff is entitled to apply for a default judgment. If the defendant seeks to challenge the judgment creditor's claim, the judgment creditor could apply for a summary judgment, i.e. for judgment without a full trial, on the basis that the defendant has no defence to the claim of enforcement.
- If a judgment (default or otherwise) is obtained, the judgment creditor can proceed with the enforcement of the judgment in the same way as any Hong Kong judgment.

#### Procedure for enforcement under common law

Where a foreign judgment has been successfully sued upon under common law, it can then be enforced in Hong Kong. The method of enforcement will vary depending on the type of enforcement desired (see question 4.1 below).

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

#### Grounds for challenge under common law

Under common law, a judgment debtor may defend the Hong Kong action brought by a judgment creditor on the following grounds:

- the foreign court had no jurisdiction over the claim;
- the foreign judgment is not final and/or conclusive over the merits of the claim;
- the claim is not for a fixed sum of money;
- the foreign judgment is contrary to substantial justice, or procured by fraud, or contrary to public policy; or
- the foreign judgment is inconsistent with a previous decision rendered in Hong Kong or a foreign judgment recognisable in Hong Kong.

The challenge can be made at the time of filing of the defence to the claim.

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

The recognition and enforcement of foreign judgments in relation to certain specific subject matters is governed by separate statutory regimes, including:

- family law matters under the Maintenance Orders (Reciprocal Enforcement) Ordinance (Cap. 188);
- judgments in connection with the carriage of nuclear materials under the Nuclear Material (Liability for Carriage) Ordinance (Cap. 479) or carriage of oil under the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap. 414);
- applications for assistance in criminal matters under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525); and
- probate and letters of administration under the Probate and Administration Ordinance (Cap. 10).

#### **2.9 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?**

Hong Kong courts generally take a liberal approach to the recognition and enforcement of foreign judgments.

Only when the judgment of a foreign court is inconsistent with a previous decision of a competent Hong Kong court concerning proceedings between the same parties, the foreign judgment would not be considered final and conclusive.

Where there are local proceedings pending between the same parties concerning the same issue, the Hong Kong courts will decide whether the foreign judgment can be said to be final and conclusive on the issue.

**2.10 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?**

Under common law, since a foreign judgment is sued upon as a fresh cause of action, a prior judgment on the same or a similar issue between different parties may have a bearing on the recognition and enforcement of the judgment. There is unlikely to be any effect on the recognition and enforcement in such a scenario under the FJREO or the MJREO provided the foreign judgment is final and conclusive.

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

The Hong Kong courts will normally not look at the underlying merits of the foreign judgment as long as all of the other requirements set out in questions 2.3 and 3.1 are met. It is important that the judgment is not against public policy or the notions of natural justice of Hong Kong.

**2.12 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 uniformly across Hong Kong.

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

Under common law, a judgment creditor has 12 years from the date on which the foreign judgment became enforceable to commence fresh proceedings in Hong Kong to recover the judgment sum as a debt. It must be noted that the court will not grant any arrears of interest in respect of any judgment after six years from the date on which the interest became due.

### 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 satisfy in order to be recognised and enforceable under the respective regime?**

Under the FJREO, a 'judgment' means: (i) a judgment or order given or made by a court in any civil proceedings; or (ii) a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party. However, it does not include overseas judgments given in breach of an agreement for the settlement of disputes.

The MJREO defines a Mainland judgment to mean a judgment, ruling, conciliatory statement or order of payment in civil or commercial matters that is given by a designated court, being the Supreme People's Court, a Higher People's Court, an Intermediate People's Court, or a recognised Primary People's Court.

#### Recognition under the FJREO

The FJREO follows a statutory registration scheme based on a reciprocal arrangement for recognition and enforcement with countries enlisted in question 1.1. For a foreign judgment to be recognised under the FJREO:

1. the judgment must be from a superior court, i.e. a court with unlimited jurisdiction in civil and criminal matters;
2. the judgment must not have been wholly satisfied;
3. 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;
4. the judgment must be enforceable by execution in the country of the original court;
5. the judgment must be final and conclusive between the parties; and
6. the judgment must be for a sum of money.

#### Recognition under the MJREO

For a Mainland judgment to be registrable under the MJREO:

1. the judgment must have been handed down by a designated court, being the Supreme People's Court, a Higher People's Court, an Intermediate People's Court, or a recognised Primary People's Court;
2. the judgment must be in relation to a commercial contract and should have been given on or after the commencement of the MJREO;
3. the parties to the commercial contract should have had a written agreement made on or after the commencement of the MJREO specifying that the courts in Mainland China would have exclusive jurisdiction over the dispute;
4. the judgment must be enforceable in Mainland China;
5. the judgment must be final and conclusive between the parties; and
6. the judgment must be an order for a definite sum of money (other than taxes, penalties or fines).

Upon registration, the foreign judgment or the Mainland judgment can be enforced by the usual procedures available to judgments of Hong Kong courts (see question 4.1 below).

Under section 4(1) of the FJREO, a judgment creditor has six years from the date of the foreign judgment to have it registered in Hong Kong.

Under section 7(1) of the MJREO, a judgment creditor has two years from the last day of the period specified for performance of the judgment if it is so specified, or from the date the judgment takes effect in any other case, to have the judgment registered in Hong Kong.

**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?**

Yes, there is a difference between the recognition and enforcement of judgments. Recognition does not automatically lead to enforcement of the foreign judgment and a judgment creditor must take additional steps for enforcement. Once the judgment is recognised and challenges are successfully resisted, it can be given effect to by enforcement procedures. Neither the FJREO nor the MJREO define registration and enforcement, yet these are understood as two distinct stages relating to a foreign judgment in Hong Kong.

In the context of both the FJREO and the MJREO, 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.

Under both the regimes, the foreign judgment needs to be registered before it can be enforced. Enforcement implies giving effect to the relief or remedy by way of the enforcement mechanisms available (see questions 3.3 and 4.1 below).

**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.**

Under the FJREO

A foreign judgment can be recognised under the FJREO by following the procedure below:

1. the judgment creditor of the foreign judgment applies *ex parte* to the Court of First Instance to register the foreign judgment, which should be supported by an affidavit and a draft order setting out the basis upon which the requirements under the FJREO are met (see question 3.1 above);
2. if the application and other documents are in order, the court will register the foreign judgment;
3. the judgment creditor must serve the notice of registration on the judgment debtor;
4. the judgment debtor may attempt to set the registration aside (the grounds are set out in question 3.4 below); and
5. if the registration is not set aside within the specified time (see question 3.4 below), the judgment creditor may proceed with the enforcement of the registered foreign judgment.

Under the MJREO

A Mainland judgment can be recognised under the MJREO by following the procedure below:

1. the judgment creditor of the Mainland judgment is required to apply *ex parte* to the Court of First Instance for registration of the judgment. The application should be supported by an affidavit exhibiting the following:
  - a sealed copy of the Mainland judgment;
  - duly authenticated copy of the choice of Mainland court agreement;
  - a certification from the Mainland court that the judgment is final and conclusive between the parties; and
  - a draft order setting out the basis upon which the requirements under the MJREO are met (see question 3.1 above);
2. if the application and other documents are in order, the court will register the foreign judgment;
3. the judgment creditor must serve the notice of registration on the judgment debtor;
4. the judgment debtor may attempt to set the registration aside (the grounds are set out in question 3.4 below); and
5. if the registration is not set aside within the specified time, the judgment creditor may proceed with the enforcement of the registered foreign judgment.

If the judgment creditor seeks to issue execution under the FJREO or the MJREO, an affidavit of service of the registered judgment and any other order made by the Hong Kong court is required to be produced before the Registrar. A judgment may be enforced by any of the means available for enforcement of a Hong Kong judgment (see question 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 be challenged under the special regime? When can such a challenge be made?**

Under the FJREO

A judgment debtor can apply to set aside a foreign judgment registered under the FJREO 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; or
6. the rights under the judgment are not vested in the person by whom the application for registration was made.

Under the MJREO

A judgment debtor can apply to set aside a Mainland judgment registered under the MJREO on the following grounds:

1. the requirements for registration were not met or the judgment has been registered in contravention of the MJREO;
2. the choice of Mainland court agreement was invalid unless it has been declared as valid by the Mainland court;
3. the judgment has been wholly satisfied;
4. the courts in Hong Kong have exclusive jurisdiction;
5. the judgment debtor was either not adequately summoned or was not given sufficient time to defend as per the laws of the Mainland;
6. the judgment was obtained by fraud;
7. enforcement is contrary to public policy;
8. a judgment or award on the same cause of action between the parties has been obtained outside Hong Kong and has been recognised or enforced in Hong Kong; or
9. the judgment has been reversed or otherwise set aside pursuant to appeal or retrial in the Mainland.

Under both, the FJREO as well as the MJREO, the registration of a judgment can be challenged within the time period specified in the order registering the judgment. Such time period may be extended by the court and the application for setting aside must be made within this period.

## 4 Enforcement

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

Once a foreign judgment becomes a Hong Kong judgment, the normal enforcement routes become available to the judgment creditor. This can be done in several ways:

1. a charging order over land or securities;
2. garnishee proceedings, which require a third party who owes money to the judgment debtor to pay the judgment creditor;
3. an examination order against the judgment debtor, who will be cross-examined on oath about the whereabouts of his or her assets;
4. a writ of *fieri facias* against any movable property; or
5. winding-up or bankruptcy proceedings, often considered as a last resort.

## 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? Please provide a brief description.**

**Possibility of enforcing non-monetary foreign judgments under common law**

In *Jiang Xi An Fa Da Wine Co. Ltd. v. Zhan King* [2019] HKCFI



2411, the Court of First Instance observed that although the common law prohibition on the recognition and enforcement of non-monetary foreign judgments has not been contested in Hong Kong, given the global change in position, it is time to reconsider the prohibition. This opens doors for an interesting change that may be brought about in the enforcement of non-monetary foreign judgments under the common law regime.

**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, 18 January 2019 (the “Arrangement”)**

Hong Kong and China have periodically entered into arrangements for mutual legal assistance in civil and commercial matters. The Arrangement seeks to provide greater clarity and certainty for recognition and enforcement of judgments in a wider range of civil and commercial matters.

The Arrangement covers monetary as well as non-monetary relief. It also sets out jurisdictional grounds for the purpose of recognition and enforcement as well as grounds for refusal of recognition and enforcement. For the Arrangement to take effect, local legislation is yet to be implemented in Hong Kong.

**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 in your jurisdiction?**

1. In straightforward cases, an application under common law takes around six to 12 months. Under the FJREO, the process takes around two to four months, if uncontested.
2. The relevant provisions in the Rules of the High Court must be adhered to.
3. Affidavits in support of recognition under the FJREO should include any prior challenges to jurisdiction and dismissal of the same. Similarly, if a party has submitted to the jurisdiction of a foreign court without challenge, this should also be noted in the affidavit to strengthen the application.
4. 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 Hong Kong.



**Nick Gall** is Senior Partner and Head of Litigation at Gall. He has acted for publicly listed companies, senior employees, the Hong Kong Government, the US Government, major international banks and corporations throughout the world.

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Corporate Tax  
Cybersecurity  
Data Protection  
Derivatives

Designs  
Digital Business  
Digital Health  
Drug & Medical Device Litigation  
Employment & Labour Law  
Enforcement of Foreign Judgments  
Environment & Climate Change Law  
Family Law  
Financial Services Disputes  
Fintech  
Foreign Direct Investment Regimes  
Franchise  
Gambling  
Insurance & Reinsurance  
International Arbitration  
Investor-State Arbitration  
Lending & Secured Finance  
Litigation & Dispute Resolution  
Merger Control

Mergers & Acquisitions  
Mining Law  
Oil & Gas Regulation  
Outsourcing  
Patents  
Pharmaceutical Advertising  
Private Client  
Private Equity  
Product Liability  
Project Finance  
Public Investment Funds  
Public Procurement  
Real Estate  
Sanctions  
Securitisation  
Shipping Law  
Telecoms, Media & Internet  
Trade Marks  
Vertical Agreements and Dominant Firms