



Newsletter No. 123 (EN)

**Enforcement of Foreign Judgements  
in Hong Kong**

February 2015

Although Lorenz & Partners always pays great attention on updating information provided in newsletters and brochures we cannot take responsibility for the completeness, correctness or quality of the information provided. None of the information contained in this newsletter is meant to replace a personal consultation with a qualified lawyer. Liability claims regarding damage caused by the use or disuse of any information provided, including any kind of information which is incomplete or incorrect, will therefore be rejected, if not generated deliberately or grossly negligent.

## I. Introduction

There are certain cases and situations where it is necessary to enforce a court judgment in Hong Kong which has been obtained in another jurisdiction.

For example, a plaintiff may sue a defendant outside of Hong Kong because both parties reside in another country, e.g. Germany. However, the plaintiff then finds it difficult or even impossible to enforce the judgment in Germany, because the defendant does not have any assets there or has now relocated to Hong Kong. In such circumstances, it is necessary to enforce the foreign judgment in Hong Kong.

Under Hong Kong law any judgment which is awarded by a non-Hong Kong court is referred to as “foreign judgment” This includes judgments which are awarded in the courts of Mainland China and Macau. Foreign judgments are not automatically enforceable in Hong Kong. Thus the judgment creditor (the person who succeeded in the proceedings) has two choices:

- (1) Commence a new set of proceedings in a Hong Kong court (assuming that Hong Kong has jurisdiction over the respective matter). At the end of these proceedings the judgement creditor would have a Hong Kong i.e. domestic judgment which could be enforced as such; or
- (2) Register the foreign judgment with the Hong Kong court and seek to enforce the foreign judgment in Hong Kong.

The *Foreign Judgments (Reciprocal Enforcement) Ordinance* governs the registration system and court orders for the enforcement and recognition of all foreign judgments except those obtained from Mainland China and Macau courts.

## II. Common law vs. Statutory regime

There are two regimes governing the enforcement and recognition of foreign judgments in Hong Kong: the common law regime and the statutory regime.

### 1. The common law regime

The common law regime is based on principles established by case law, and it governs the recognition and enforcement of foreign judgments from all courts in most countries.

### 2. The statutory regime

In contrast, the statutory regime only governs judgments from “superior courts” in certain foreign countries. The foreign countries under the statutory regime include the Commonwealth countries, (Australia, Brunei, Canada India, Malaysia, New Zealand, Singapore etc). It also includes some EU countries, such as Belgium, **Germany**, France, Italy, Austria, and The Netherlands, and interestingly, it also includes one non-EU and non-Commonwealth country: Israel.

Except for Australia, the statutory regime only enforces and recognizes judgments from “superior courts”. The “superior courts” are defined as the courts in the receptive country which have unlimited jurisdiction over civil and criminal matters. Further only monetary judgments may be enforced under the statutory regime.

### 3. The differences between the two regimes

Although there are many technical differences between the two regimes, the underlying substantive rules and principles are largely the same.

Countries and courts which are not covered by the statutory regimes are covered by the common law regime. Equally non-monetary judgments are covered by the common law regime as well.

### 4. Conclusion

Due to the combined efforts of the common law and statutory regimes any civil judgment from any court in the world is, in principle, enforceable and recognizable by Hong Kong courts.

## III. Requirements to Enforce a Foreign Judgment in Hong Kong

### 1. The Judgement is final and conclusive

According to Section 3 (2)(a) of the *Foreign Judgment (Reciprocal Enforcement) Ordinance*, a foreign judgment must be final and conclusive in order to be enforceable in Hong Kong. This is echoed in the case *Nouvion v Freeman* (1989) 15 AC 1, where the judge stated that a foreign judgment must be “conclusively, finally and forever established” in order to be enforced.

A foreign judgment will only be “final and conclusive” once it cannot be challenged by the judgment debtor in the issuing court anymore, i.e. it cannot be varied or set aside.

However, if there is a possible or even pending appeal, then a judgment can still be classed as final and conclusive (*Linprint PTY Ltd v Hexham Textiles PTY Ltd* [1993] 23 NSWLR 508). This rule was designed to prevent judgment debtors from making multiple and/or groundless appeals. However, in practice, Hong Kong courts rarely enforce judgments until the outcome of any pending appeal has been determined.

### 2. Criminal and non-monetary civil foreign judgements

According to Section 2 of the *Foreign Judgment (Reciprocal Enforcement) Ordinance*, only foreign judgments which concern monetary civil matters can be enforced. Criminal monetary penalties such as a tax payment or fine will not be enforced on the basis that such matters are beyond the concern and remit of the Hong Kong courts.

### 3. Sufficient notice of the original proceedings

The judgment debtor may object to the enforcement of the foreign judgment in Hong Kong if he was not given sufficient notice of the original proceedings in the foreign court, and as a result had no opportunity to defend his case. This concept of reasonable notice and opportunity is at the heart of substantial justice/natural justice principle which the Hong Kong courts follow.

However, the burden of proof in this regard is quite high. As such this argument has only been successful once in the English case of *Adams v Cape Industries plc* [1990] 1 Ch 433.

### 4. Judgement not obtained by fraud

Hong Kong courts will not recognize and enforce any foreign judgment which is obtained by fraud.

The definition of fraud includes:

- (1) a party knows false evidence has been introduced;
- (2) a party procures any false evidence;
- (3) a party deceives the foreign court(s);
- (4) intimidation by violence or other illegal acts; and
- (5) the foreign court is corrupt.

An example of fraud is the case *Price v Denburch* (1837) 8 Sim 279, where the judge

had a financial interest in the outcome of the case.

It should be noted that a judgment debtor can allege that the foreign judgment was obtained by fraud even if the same fraud allegation was made and rejected in the original foreign court (*Abouloff v Oppenheimer* (1882))

### **5. Judgement is not contrary to public policy**

The enforcement of the foreign judgment must not be contrary to Hong Kong public policy. There are very few cases where the judgment debtor has raised this argument successfully in Common Law countries, and there is no such reported case in Hong Kong.

### **6. Conflicting judgment(s)**

Under Common Law tradition and the principle of *res judicata*, a Hong Kong court will not recognize and enforce a foreign judgment if there has been a previous conflicting Hong Kong decision on the same matter. This was confirmed in *Vervaeke v Smith* [1983] 1 AC 145. Further, the case *Showlag v Mansour* [1994] 2 All ER 129 established that if there are two conflicting prior decisions, then the one which was decided first will usually apply.

### **7. The foreign court had jurisdiction**

A Hong Kong court will not recognize or enforce a foreign judgment if the foreign court did not have jurisdiction over the case. There are two ways to prove a foreign court's legitimate jurisdiction.

First, the judgment debtor resided in the foreign jurisdiction at the time the proceedings were commenced. If the judgment debtor is a company, then it must either have been registered in the foreign country or have had its place of business in the foreign country when the proceedings began in order to be classified as a resident thereof.

Second, the judgment debtor participated in the foreign court proceedings. The judgment debtor must have had a certain level of participation in or given some level of consent to the court proceedings. If the judgment debtor voluntarily appears before the foreign court in the original proceedings, then such consent/participation is deemed to have occurred. In addition, if the judgment debtor brought a counterclaim in the original proceedings, then the foreign court is also deemed to have jurisdiction to the case.

## **IV. Procedure to Enforce a Foreign Judgement in Hong Kong**

### **1. Time limit**

Any person who obtains a foreign judgment must register the said judgment with the Hong Kong Court of First Instance within 6 years of the judgment date.

### **2. Application to register a foreign judgement**

An application made to enforce a foreign judgment may be made *ex parte* (without notifying the other party). A "writ of fieri facias to enforce a foreign registered judgment" should be used to begin the registration procedure. The Court may direct the applicant to issue the originate summons via an "originating summons-expedited form" and then serve the same upon the judgment debtor.

Further, according to the *Rules of the High Court*, the registration application must include an affidavit which is supported by the following:

- (1) An authenticated copy of the judgment;
- (2) The name, business and last known abode of the judgment creditor and judgment debtor;
- (3) Evidence to show that the judgment creditor is entitled to enforce the judgment and the judg-

- ment is enforceable in Hong Kong;
- (4) Other evidence to prove that the judgment is enforceable in Hong Kong.

### 3. Court order for registration

Once the application has been submitted, the Court will review the contents thereof and make an order for registration. This order will state the final date on which the judgment debtor may apply to set aside the registration. Once issued, the order must be served upon the judgment debtor along with a Notice of Registration.

### 4. Notice of Registration

The Notice of Registration of a foreign judgment must be served upon the judgment debtor, either by delivering it to him personally, or by sending it to him at his last known address or place of business. The Notice must state:

- (1) Full particulars of the registered judgment and the order for registration;
- (2) Name and address of the judgment creditor or his solicitor;

- (3) That the judgment debtor has the right to apply to set aside the registered judgment; and
- (4) The deadline for making such an application to set aside the registered judgment.

### 5. Application to set aside a registration

The judgment debtor may apply to the court to set aside the registration order if the judgment:

- (1) was obtained by fraud;
- (2) is contrary to public policy;
- (3) was granted by a foreign court which had no jurisdiction; or
- (4) was obtained without giving sufficient opportunity to the judgment debtor to defend himself in the foreign court.

### 6. Execution

After the period to apply to set aside the registration has expired, or, if such an application has been made and rejected, the judgment creditor may initiate the execution of the judgment by providing an affidavit of service of the Notice of Registration to the Registrar of the High Court.

*We believe that the information provided was helpful for you.  
If you have any further questions, please do not hesitate to contact:*

**Lorenz & Partners (Hong Kong) Ltd.**

Unit 2906, 29/F, Wing On Centre  
111 Connaught Road Central

Tel: +852 252 814 33

[www.lorenz-partners.com](http://www.lorenz-partners.com)

E-Mail: [hongkong@lorenz-partners.com](mailto:hongkong@lorenz-partners.com)