

## Enforcing Mainland Civil and Commercial Judgments in Hong Kong: The Emerging Practice under the New Arrangement

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### Introduction

It has now been more two years since the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters between the Courts of the Mainland and of the Hong Kong Special Administrative Region (the “**New Arrangement**”) came into effect on 29 January 2024. This new framework, implemented in Hong Kong by the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance (Cap. 645), represents a major evolution in cross border judicial cooperation between the two jurisdictions.

Since the New Arrangement came into force, our firm has acted in a number of applications to register and enforce Mainland civil and commercial judgments in Hong Kong. We have observed, first hand, how the New Arrangement now operates in practice, as well as the interpretive questions that continue to arise in the courts.

It is tempting to say that the New Arrangement has simply replaced the earlier system under *the 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 Pursuant to Choice of Court Agreements between Parties Concerned* (the “**Old Arrangement**”) and the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597). In fact, the legal reality is more nuanced. The older regime has not been repealed and continues to govern judgments that arise from certain types of jurisdiction agreements. Understanding the coexistence and interaction of these two statutory schemes, and the case law that has begun to emerge under each, is essential for anyone dealing with cross border commercial disputes involving Hong Kong and Chinese Mainland.

### The Two Statutory Frameworks Governing Reciprocal Enforcement

The older framework, embodied in Cap. 597, applies to judgments arising out of contracts that contain an exclusive choice of court agreement in favour of either a Mainland or Hong Kong court. Under this scheme, a Mainland judgment can be registered and enforced in Hong Kong only if it was delivered by a “designated court”. These courts are defined in the legislation to include the Supreme People’s Court, the High People’s Courts, the Intermediate People’s Courts, and those Primary People’s Courts that are listed in the Hong Kong Gazette. As practitioners will be aware, that Gazette list represents only a subset of the Primary People’s Courts in the Mainland, meaning that some judgments, even if final and effective domestically, will not qualify for registration in Hong Kong under Cap. 597.

By contrast, the New Arrangement, codified through Cap. 645, establishes a much broader reciprocal mechanism. It covers most civil and commercial matters and dispenses with the need for an exclusive contractual jurisdiction clause. Cap. 645 sets out, nevertheless, a series of exclusions that preserve certain areas of autonomy, such as matrimonial and family disputes, succession, insolvency and restructuring processes, arbitration related matters, and the validity of intellectual property rights including patents. Judgments within those excluded categories must still rely on separate or common law enforcement routes.

Importantly, Cap. 645 adopts the Mainland legal concept of an “effective judgment”, which is subtly but meaningfully different from the “final and conclusive” requirement under Cap. 597. This reflects an effort to harmonise terminology and to streamline enforcement procedures according to Mainland judicial practice.

## The Continuing Relevance of Cap. 597

Although the New Arrangement is far more comprehensive in scope, the Old Arrangement remains legally operative. Section 5(1)(j)(i) of Cap. 645 provides that a Mainland judgment arising from an exclusive choice of court agreement made before 29 January 2024 is expressly excluded from the new regime. Therefore, such judgments continue to fall under Cap. 597. The effect is that two statutory mechanisms coexist: the new, broad regime for post 2024 jurisdiction agreements and all judgments not linked to exclusive clauses, and the residual regime under Cap. 597 for older agreements.

Practically speaking, this division has generated transitional questions and occasional procedural complexity. It also reintroduces, for certain matters, the limitation that only judgments from designated Mainland courts may be enforced. Where a judgment is excluded from Cap. 645 and, at the same time, originates from a non designated Primary People's Court, it will not qualify for registration under Cap. 597 either. The creditor in that scenario is left without a statutory route and must turn to the common law, suing on the judgment debt as a cause of action. Common law enforcement remains available as a safety net but is by nature slower, more expensive, and subject to wider potential defences.

## The Significance of *Deng Mian v Pan Rong*

One of the most instructive recent judgments is *Deng Mian v Pan Rong* [2025] HKCFI 3905, decided by the Court of First Instance in August 2025. This case demonstrates that the line between Cap. 597 and Cap. 645 depends not on the date of the Mainland judgment, but on when the relevant jurisdiction agreement was made.

The parties in *Deng Mian* had executed two contracts in 2017: a finance management agreement and a loan agreement, both containing clauses conferring jurisdiction on the Chinese Mainland courts. When a dispute arose, litigation began in Fujian but was later transferred to the Shanghai Yangpu Court pursuant to the 2017 jurisdiction clause. The Shanghai appellate court delivered its judgment in August 2024, well after Cap. 645 had come into operation. The applicant sought to register this judgment in Hong Kong under the new regime, arguing that because the judgment post dated January 2024, it fell under Cap. 645.

Both the Master and Au Yeung J on appeal rejected that submission. The Court found that the judgment was an “excluded judgment” under section 5(1)(j)(i) of Cap. 645 because it was delivered pursuant to a choice of Mainland court agreement made prior to the commencement of the new Ordinance. In its judgment, the court emphasised two key points: first, jurisdiction clauses are separable from the substantive contract and survive even if the main agreement is found to be void; and second, because there was no challenge to the validity of the jurisdiction clause itself, it remained operative for the purpose of determining which statutory regime applied.

Consequently, the 2024 Shanghai appellate judgment could not be enforced under Cap. 645, despite being issued after it came into effect. Enforcement would have to proceed, if at all, under Cap. 597 or, should that prove unavailable, by commencing common law proceedings. The Court expressly held that this statutory outcome could not be altered by considerations of fairness, equity, or convenience. The decision underscores that the critical determinant under the Hong Kong legislation is the date and character of the jurisdiction agreement, not the timing of the judgment itself.

## Consequences of Exclusion from the New Regime

Where a judgment is excluded from Cap. 645, the next question for practitioners is whether Cap. 597 provides an alternative enforcement path.

As noted, Cap. 597 applies only where the issuing Mainland court falls within the list of designated courts published in the Hong Kong Gazette. Many Primary People's Courts, although competent under Mainland law, are not so listed. A judgment from such a court cannot be registered in Hong Kong as a "Mainland judgment" under Cap. 597.

This legislative gap creates significant practical consequences. Creditors holding these judgments face the prospect of having no statutory enforcement mechanism in Hong Kong. Their only recourse is to bring an ordinary common law claim on the judgment debt. In doing so, they must establish that the judgment is final, conclusive, and on the merits, and they must prove service, jurisdiction, and absence of fraud or breach of natural justice. Debtors, for their part, are entitled to raise broader defences than would otherwise be available under reciprocal statutory schemes.

The result is a slower and more expensive process that carries evidential and procedural uncertainty. Practitioners advising on cross-border transactions should therefore take care, when drafting choice of court clauses, to confirm whether the relevant Mainland court is a designated one for the purpose of Cap. 597, and to consider the enforcement implications accordingly.

### **Recent Judicial Developments under Cap. 645**

The Hong Kong courts have now begun to interpret and apply Cap. 645 in earnest. The first wave of cases since 2024 demonstrates both the reach of the new regime and the manner in which the courts have sought to balance efficiency with due process safeguards.

In *Huzhou Shenghua Financial Services Company Ltd v Hang Pin Living Technology Company Ltd* CACV 268/2024, the Court of Appeal considered the meaning of an "effective judgment" under the New Arrangement. The Court affirmed that Hong Kong should adopt the Mainland understanding of an "effective" judgment, which refers to a judgment that has become legally binding and enforceable within the Mainland judicial system. It does not require, in Hong Kong terms, that all avenues of appeal be extinguished before enforcement may be sought. The decision illustrates the court's willingness to give substantive effect to the legislative aim of streamlining enforcement under the new regime and avoiding unnecessary re litigation.

A further clarification has recently been provided by the Court of First Instance concerning the relationship between a Mainland judgment's finality and the Mainland "trial supervision procedure", under which a higher court may, in limited circumstances, reopen a case after the judgment has become legally effective. In its decision *Beijing Renji Real Estate Development Group Co., Ltd v Zhu Min* [2026] HKCFI 197, the Court reaffirmed that the mere possibility of trial supervision does not undermine a judgment's finality or effectiveness for the purposes of enforcement in Hong Kong. A Mainland judgment is regarded as "effective" within the meaning of the New Arrangement, and thus enforceable under Cap. 645, so long as it is presently binding and enforceable in the Mainland judicial system, even if exceptional supervisory remedies remain theoretically available. This interpretation underscores the Hong Kong court's pragmatic approach to cross border enforcement: it focuses on the operative enforceability of the judgment in the Mainland, rather than on the absolute exhaustion of all conceivable review mechanisms. The ruling provides welcome clarity and reassurance to practitioners and judgment creditors alike, aligning Hong Kong's recognition practice with the legislative intent of promoting efficient and predictable reciprocity under the New Arrangement.

In *China Minsheng Trust Co., Ltd v Fu Kwan* CACV 118/2024, the Court of Appeal revisited the requirements for jurisdiction, proper summons, and the monetary nature of a judgment. Although the dispute arose under the framework of Cap. 597, the court's reasoning carries continued relevance. It reaffirms that Hong Kong courts will carefully scrutinise whether the issuing Mainland court had jurisdiction according to the parties' agreement and Mainland procedural law, and whether the defendant was properly summoned. Compliance with those procedural foundations remains essential for recognition under either statutory regime.

Another significant decision, *Chinachem Financial Services Ltd v Century Venture Holdings Ltd* CACV 98/2023, demonstrates the continued vitality of the public policy exception under Hong Kong law. The Court of Appeal refused enforcement despite formal compliance with the

statutory criteria, finding that the defendant's conduct had interfered with the administration of justice and therefore contravened Hong Kong's public policy. The court underscored that reciprocity and efficiency cannot override fundamental legal principles or the integrity of the judicial process.

Another noteworthy recent case is *Tianjin Jinrong Investment Services Group Co Ltd v Jinan Muhe Enterprise Management Co Ltd and Others* [2025] HKCFI 6182, which was decided under Cap. 597. In this case, the Court of First Instance set aside part of a registration order on the ground that the Mainland judgment's "enhanced interest" provision, made pursuant to Article 260 of the PRC Civil Procedure Law, was penal in nature and therefore not registrable or enforceable in Hong Kong. The judge reaffirmed that sums imposed for punitive rather than compensatory purposes constitute a "fine or other penalty" and are unenforceable under section 5(2)(e) of Cap. 597, as well as contrary to Hong Kong public policy. Although the decision arose under the Old Arrangement, it provides important guidance under the New Arrangement by clarifying that when seeking registration of Mainland judgments in Hong Kong, practitioners must carefully examine whether any component of the award, including "double interest" or similar enhanced-rate provisions, has a punitive character that would render it non-registrable.

Taken together, these appellate decisions signal that while Cap. 645 has brought a more liberal and efficient statutory route for enforcement, Hong Kong courts will not hesitate to exercise careful oversight over jurisdictional and public policy issues. Practitioners should expect that challenges based on these grounds will continue to feature prominently in applications to set aside registration.

## Practical Considerations for Practitioners

From a practitioner's perspective, successful enforcement of a Mainland civil or commercial judgment in Hong Kong now requires rigorous preliminary assessment. The first step is to determine which statutory regime applies. This hinges on the date of any jurisdiction agreement and the court that issued the judgment.

Under Cap. 645, the applicant must demonstrate that the judgment is effective under Mainland law and falls within the permissible scope. The application is made *ex parte* to the High Court by way of originating summons, supported by affidavit evidence. The court will then review the materials to ensure statutory compliance before ordering registration. Once registered, the creditor must serve notice on the judgment debtor, who may then apply to set aside the registration on limited grounds such as lack of jurisdiction, fraud, or public policy.

Where the judgment is excluded from Cap. 645, the practitioner must turn to Cap. 597 or, failing that, to the common law. Each route carries distinct evidential and procedural demands. It is therefore critical to advise clients at the outset on the applicable legal regime, the likely timeline, and the prospects of success. In addition, creditors should be advised to obtain from their Mainland lawyers documentary proof that the judgment is final and enforceable, including certification from the issuing court pursuant to the procedural rules under the New Arrangement.

## Outlook and Conclusion

The introduction of Cap. 645 represents a landmark in the legal integration between Hong Kong and the Chinese Mainland, extending reciprocal enforcement well beyond what was possible under Cap. 597. The new regime modernises the cross border enforcement landscape by removing the exclusive choice of court condition and aligning Hong Kong's enforcement process with Mainland civil procedure. This development enhances both efficiency and predictability, encouraging commerce and investment across the boundary.

Nevertheless, the transition period has exposed areas of complexity. *Deng Mian v Pan Rong* reminds practitioners that older jurisdiction clauses continue to fall under Cap. 597, regardless of when a judgment is rendered. At the same time, cases such as *Hang Pin Living*

*Technology, Fu Kwan, Chinachem Financial Services and Jinrong Investment* confirm that Hong Kong courts will interpret the new regime pragmatically but with continued attention to fundamental legal safeguards.

In the longer term, as contractual relationships governed by pre 2024 jurisdiction agreements fade from active litigation, the New Arrangement will likely become the exclusive statutory vehicle for civil and commercial judgment enforcement between Hong Kong and the Mainland. For now, the coexistence of both regimes requires careful navigation. Practitioners advising in this area must assess jurisdiction agreements, identify the issuing court, satisfy procedural rules for registration, and anticipate possible defences.

Despite these transitional challenges, the New Arrangement has already provided parties on both sides of the border with a more reliable, efficient, and transparent framework for the reciprocal recognition and enforcement of judgments — an important step in strengthening Hong Kong's role as a regional centre of dispute resolution and judicial cooperation.

## **Outlook and Conclusion**

Our dispute resolution team regularly advises clients on the recognition and enforcement of Mainland civil and commercial judgments in Hong Kong. We assist in determining the applicable enforcement regime, preparing registration applications under both Cap. 597 and Cap. 645, and pursuing common law actions where statutory enforcement is unavailable.

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