

# Mainland and Hong Kong to Expand Scope of Recognition of Judgments



JANUARY 2, 2024

The Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and the Hong Kong Special Administrative Region (**2019 Arrangement**) will come into effect simultaneously in Mainland China (**Mainland**) and Hong Kong Special Administrative Region (**HKSAR**) on January 29, 2024. In the context of the increasing economic and trade exchanges between Mainland and HKSAR, the implementation of the 2019 Arrangement is set to put in place a comprehensive mechanism for the mutual recognition of judgments on civil and commercial matters in the two jurisdictions.

## I. Background of the 2019 Arrangement

The 2019 Arrangement was reached by the Supreme People’s Court of China (**SPC**) and the Department of Justice of Hong Kong in Beijing on January 18, 2019 and comprising 31 articles. It sets out, among others, the scope and content of judgments in civil and commercial cases subject to mutual recognition and enforcement between the two jurisdictions, the procedures and manner of applying for recognition and enforcement, the review of the jurisdiction of the court of original jurisdiction, circumstances in which recognition and enforcement should not be permitted, and means of redress.

## II. Changes in the scope of mutual recognition of judgments under the 2019 Arrangement

Previously, the Mainland and HKSAR had signed the “Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements by the Parties” as early as in 2006 which was then amended in 2008 (“**2008 Arrangement**”). With the 2019 Arrangement entering into effect in January 2024, it will supersede and upgrade the 2008 Arrangement and significantly expand the scope of mutual recognition of judgments from “certain civil and commercial cases governed by agreements of the parties” contemplated in the 2008 Arrangement to “full coverage” of nearly all civil and commercial cases envisaged in the 2019 Arrangement.

However, the 2019 Arrangement explicitly sets out the following eight categories of cases which are temporarily excluded from its remit:

- (i) cases on the affirmation of the validity of arbitration agreements and the setting aside of arbitral awards;

- (ii) cases on the recognition and enforcement of judgments or arbitral awards of other jurisdictions;
- (iii) cases on corporate insolvency, debt restructuring, and personal insolvency;
- (iv) certain maritime cases including those on marine pollution, limitation of liability for maritime claims, general average, emergency towage and salvage, maritime liens, and carriage of passengers by sea;
- (v) certain intellectual property cases including those on the tortious infringement of inventions and utility models heard by a people's court of the Mainland; cases on the tortious infringement of standard patents (including original grant of patents) and short-term patents heard by a court of the HKSAR; cases on the affirmation of royalties of standard essential patents heard by a court of the Mainland or a court of the HKSAR; and cases concerning intellectual property rights not otherwise covered under Article 5 of the 2019 Arrangement;
- (vi) cases on succession, administration or distribution of estate;
- (vii) certain matrimonial and family cases, including cases heard by a people's court of the Mainland on maintenance of parent(s) or grandparent(s), maintenance between siblings, dissolution of adoptive relationship, guardianship of adults, disputes after divorce on liability for damages, or division of property rising from a co-habitation relationship; cases heard by a court of the HKSAR on whether a decree of judicial separation should be granted (notwithstanding, the 2019 Arrangement is applicable to disputes between family members on division of property and disputes on property arising from engagement agreements); and
- (viii) cases on the determination of a natural person's qualification as a voter, declaration of disappearance or death of a natural person, or the determination of limited or lack of legal capacity of a natural person for civil acts.

These eight categories are excluded either because: (a) there is a lack of a basis for mutual recognition because there are no cases of the same type in the other jurisdiction; or (b) there are significant differences between the legal systems of the two jurisdictions in specific areas, and specific consultations are required on how to resolve the differences. For example, there have been consultations on the mutual assistance in cross-border insolvency matters.

In addition, the 2019 Arrangement will not apply to cases of a non-civil and commercial nature, such as judicial review cases and any other cases heard by the courts of the HKSAR arising directly out of the exercise of administrative powers. The latter category can cover cases premised on securities and antitrust/competition law regulatory activities, etc. Despite the foregoing, judgments of **antitrust/competition law follow-on damage actions** for loss suffered as a result of monopolistic conducts have civil and commercial attributes, which may potentially not be deemed arising directly out of the exercise of administrative powers and may thus be mutually recognized and enforced under the 2019 Arrangement.

### **III. Mutual recognition of judgments must be initiated by application of the parties concerned**

It should be noted that a judgment subject to the 2019 Arrangement will not automatically take effect in the Mainland or Hong Kong, and an application must be made by the applicant to the court of competent jurisdiction within the time period and in accordance with the procedure and manner prescribed by the law of the respondent. In the Mainland, the application for mutual recognition and enforcement of judgments should be made to the intermediate people's court in the applicant's place of domicile or the respondent's place of domicile or property; in the HKSAR, the application for mutual recognition and enforcement of judgments should be made to the High Court.

In summary, the entry into force of the 2019 Arrangement in January 2024 signals that the Mainland and Hong Kong have installed a system to ensure the full coverage of mutual legal assistance in civil and commercial matters. Whilst such a mechanism will bring increased certainty and predictability as well as greatly reduce the risks and costs to parties seeking cross-border enforcement of judgments in one or both of the two jurisdictions, it also puts forward higher requirements for the administration of the law. A well-functioning system of mutual legal assistance will improve China's cross-border trade and investment environment.

## Author



Stephanie Wu  
Senior Counsel, YuandaWinston

4 Min Read

---

## Author

Stephanie Wu

---

## Related Topics

Asia

Hong Kong

China

## Related Regions

Asia

*This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.*