

PRC Supreme People's Court published report on judicial assistance in civil and commercial matters between the Mainland and Hong Kong SAR



On 22 January 2021, the Supreme People's Court of China issued a report recognising the efforts and achievements in relation to judicial assistance for civil and commercial matters between the Mainland and Hong Kong SAR (the "**Report**").

Summary of the Report

The Report provides an overview of the development of the cross-boundary judicial assistance system between the Mainland and Hong Kong SAR. Since 1997, eight arrangements for judicial assistance in civil and commercial matters have been signed, six of which are already in effect.

Service of documents and taking evidence

The eight arrangements are divided into three categories. Firstly, in the area of service and taking of evidence in civil proceedings, two arrangements are currently in effect. They are the Arrangements on the Mutual Assistance in the Service of Civil and Commercial Judicial Documents by the Courts in the Mainland and Hong Kong SAR; and the Arrangement for Mutual Assistance in Evidence-Taking in Civil and Commercial Cases between Courts of the Mainland and Hong Kong SAR.

Reciprocal enforcement

Secondly, in the area of reciprocal recognition and enforcement of certain civil proceedings between the Mainland and Hong Kong SAR, the Arrangement on Reciprocal Recognition and Enforcement of the Judgments in Civil and Commercial Matters under Consensual Jurisdiction came into effect in 2008; and the other two Arrangements on Reciprocal Recognition and Enforcement of Civil Judgments in (i) Matrimonial and Family Cases and in (ii) Civil and Commercial Matters (in general) are not yet effective.

Arbitration arrangements

The third category relates to arbitration. They are (i) the Arrangement for the Reciprocal Enforcement of Arbitral Awards between the Mainland and Hong Kong SAR, (ii) the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of Hong Kong SAR and (iii) the Supplemental Arrangement of the Supreme People's Court for the Mutual Enforcement of Arbitral Awards between the Mainland and Hong Kong SAR. All of these three arrangements are currently in effect.

Increased reliance

It is reported that cases involving the service of judicial documents, entrusted by one of the two sides to the other, have significantly increased from 359 in 1999 to 2,382 in 2020, with the total number of over 29,000. Cases relying on other arrangements, although not yet as many as those involving service of judicial documents, are likely to continue to increase with further development of the judicial assistance system.

Characteristics of judicial assistance system

In addition, it is noted that the judicial assistance system between the Mainland and Hong Kong SAR bears three main characteristics:

1. It represents consensus on the relevant areas of judicial assistance between the two regions with very different legal culture and systems and provides a useful reference for China to further develop its international judicial assistance arrangements and foreign-related laws for judicial assistance in both procedural law and substantive law.

2. Its broad convergence of rules and mechanism will play an essential role in the development of Guangdong-Hong Kong SAR-Macau Greater Bay Area.
3. It evidences mutual understandings and closer judicial cooperation between the two regions under the "one country two systems" principle.

Further cooperation

The Supreme People's Court emphasised that efforts will be made to further promote the cross-boundary judicial assistance system between the Mainland and Hong Kong SAR, such as expanding the scope of mutual assistance for bankruptcy cases and adopting information technology to reduce procedural obstacles in the handling of cross-boundary civil and commercial cases and to enhance the quality and efficiency of judicial assistance.

Conclusion

It is expected that more and more people and businesses will benefit from the expansion and further development of the judicial assistance system. Parties, especially those with cross-border businesses or transactions, will be provided with better protection by the transparency of procedures and certainty of law and will be able to save time and costs by avoiding unnecessary re-litigation.

The authors believe that further expansions of the judicial assistance system between the Mainland and Hong Kong SAR will further enhance Hong Kong SAR's position as international parties' gateway to access justice in the Mainland of China and as Mainland Chinese parties' gateway to access justice in the rest of the world.

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