

律政司  
國際法津科

香港中環下亞厘畢道  
中國政府合署中座7樓

傳真號碼: 852-2877 2130



DEPARTMENT OF JUSTICE  
International Law Division

7/F., Man Wing  
Central Government Offices  
Lower Albert Road, Central, Hong Kong  
Fax: 852-2877 2130

本司檔號 Our Ref.: IL/TRE/22/1/1  
來函檔號 Your Ref.:  
電話號碼 Tel. No.: 2810 2403

3 November 1997

Ms Joyce Wong  
Director of Practitioners Affairs  
The Law Society of Hong Kong  
1403 Swire House,  
11 Chater Road,  
Central, Hong Kong

By Fax & By Post

Dear Ms Wong,

**Foreign Judgments (Reciprocal Enforcement)  
Ordinance (Cap 319)**

Thank you for your letter of 23 October enquiring about foreign jurisdictions which continue to recognise and enforce HKSAR judgments under their own domestic legislation.

We have indeed written to all the jurisdictions designated under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319) to enquire about their treatment of HKSAR judgments. I would like to set out below the background to these enquiries. This letter includes our understanding of the current legislative provisions in Hong Kong for registration of foreign judgments in civil and commercial matters, though you will appreciate that the courts are the authority for interpreting the law and that in any even legislation can be amended by the legislature.

**General Background**

The enforcement in the HKSAR of civil and commercial judgments from elsewhere is dealt with mainly by registration under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319). An Order made under that Ordinance designates those jurisdictions whose

judgments the HKSAR courts will enforce. The Order includes both Commonwealth and non-Commonwealth jurisdictions (but not the UK). Jurisdictions are designated on the basis of reciprocity.

Reciprocity with the Commonwealth jurisdictions designated under Cap 319 was previously established by a Commonwealth Scheme. Reciprocity with non-Commonwealth jurisdictions was established by bilateral agreements concluded with them by the UK; such agreements have ceased to apply to Hong Kong since 1 July 1997. Arrangements for the enforcement in Hong Kong of judgments from the UK itself were formerly implemented by the Judgments (Facilities for Enforcement) Ordinance (Cap 9), which did not require reciprocity.

### The Legislative Consequences of Reunification

The operation of both Ordinances has been affected by the enactment of section 2A(2)(b) of the Interpretation and General Clauses Ordinance (Cap 1) (inserted by section 5 of the Hong Kong Reunification Ordinance) which implements a decision of the National People's Congress dated 23 February 1997. Under section 2A(2)(b) provisions in any Ordinance in Hong Kong that confer privileges on the UK or other Commonwealth countries, *other than provisions giving effect to reciprocal arrangements*, have no further effect.

### The Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319)

Cap 319 should, in the light of section 2A(2)(b) of Cap 1, still apply to Commonwealth jurisdictions which demonstrate reciprocity by continuing to recognise and enforce HKSAR judgments. And there is also no reason why Cap 319 should cease to apply to non-Commonwealth jurisdictions designated under it, as long as they too continue to recognise and enforce HKSAR judgments (although such reciprocity would necessarily be other than as a result of the bilateral agreements with the UK).

With a view to clarifying the legal position, we have written to all the jurisdictions designated under Cap 319 to find out whether HKSAR judgments can be recognised and enforced there. So far, Australia and Bermuda have replied. Australia has confirmed that the same recognition and enforcement facilities as existed prior to 1 July 1997 for judgments from Hong Kong are still available in Australia. Bermuda has informed

us that it could no longer recognise and enforce judgments from the HKSAR because Bermuda's relevant legislation only applies to "any part of Her Majesty's dominion outside the UK".

The position between the UK and the HKSAR

The reciprocity requirements of section 2A(2)(b) are, however, not fulfilled in the case of judgments from the UK. That is because in the UK the enforcement of Hong Kong judgments was provided for in Part II of the Administration of Justice Act 1920, which only operated on the basis that Hong Kong was a part of the Commonwealth and therefore ceased to apply to Hong Kong from 1 July. In view of the resultant lack of enforcement facilities in the UK for judgments from the HKSAR, it appears to be the case that the relevant legislation in Hong Kong, namely the Judgments (Facilities for Enforcement) Ordinance (Cap 9), has in turn ceased to apply to UK judgments, by virtue of the failure to satisfy the reciprocity requirement of section 2(A)(2)(b) of Cap 1.

The Common Law

Notwithstanding the absence of reciprocal statutory arrangements, whether with jurisdictions designated under Cap 319 or other jurisdictions, judgments may still be enforced in Hong Kong under the common law.

I hope this letter helps to clarify the position. As you have requested, we shall keep the Law Society informed of the results of our enquiries with foreign jurisdictions designated under Cap 319.

Yours sincerely,

A handwritten signature in black ink, appearing to read "David Little". The signature is fluid and cursive, with a large initial 'D' and a stylized 'L'.

(David Little)  
Law Officer (International Law)