

Hong Kong

Kenix Yuen
Gall, Hong Kong
kenixyuen@gallhk.com

1. What are the basic criteria for the courts of your jurisdiction to allow enforcement of a foreign judgment?

A foreign judgment can be enforced by 1 of the 2 means, namely, under the statutory registration regime based on reciprocity under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319), or by common law.

Requirements under Cap 319:

1. The judgment is rendered by a superior court in a foreign country (as defined in section 4 of Cap 319A);
2. It is final and conclusive as between the parties;
3. It is a monetary judgment, but not a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; and
4. It is given after the coming into operation of the order directing that the provisions of the Ordinance shall extend to that foreign country.

Cap 319 applies to judgments obtained in Australia, Austria, Belgium, Bermuda, Brunei, France, Germany, India, Israel, Italy, Malaysia, The Netherlands, New Zealand, Singapore and Sri Lanka.

Requirements by way of common law enforcement are by and large similar. In addition to points 2 and 3 above:-

- (a) The judgment should be made by a court of competent jurisdiction over the parties and the subject matter;
- (b) It is between the same parties or their privies on an identical issue; and
- (c) It is not impeachable according to the rules on conflict of laws of Hong Kong.

In respect of mutual recognition and enforcement of judgments in civil and commercial matters between the Mainland and the Hong Kong Special Administrative Region, civil judgments in matrimonial and family cases between the Mainland and the Hong Kong Special Administrative Region, there are bilateral arrangements in place that have been updated from time to time.

2. What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, e.g. notice provisions?

After the handover of sovereignty, the doctrine of absolute sovereign immunity applies in respect of both jurisdictional immunity and enforcement immunity in Hong Kong (Congo v FG Hemisphere Associates LLC [2011] HKCFA 41). The common law doctrine of crown immunity applies to the Central People's Government of the PRC as well as its institutional units, which is also absolute in the sense that there is no exception for commercial acts.

	<p>In <i>Hua Tian Long (No.2)</i> [2010] 3 HKC 557, the defendant state waived its entitlement to crown immunity by filing a counterclaim in the Hong Kong court proceedings. If the defendant state wishes to raise the defence of jurisdictional immunity, it should make its claim and avoid taking an active role in the proceedings, otherwise such right would be considered waived. However, waiver by submission to the jurisdiction of the forum state does not automatically constitute consent to enforcement proceedings (FG Hemisphere). The state is entitled to object to execution against the property relying on its right to immunity at that stage.</p>
3.	What special considerations apply where the defendant/debtor in enforcement proceedings is a state, e.g. doctrine of sovereign immunity?
	Same as above.
4.	What exceptions may apply where the claim results from improper actions of the defendant state, e.g. wars of aggression?
	<p>Apart from waiver, there are no other exceptions to sovereign immunity in Hong Kong (common law rule in <i>Mighell v Sultan of Johore</i> [1894] 1 QBD 149). There are also no precedents or legislations in Hong Kong suggesting that wars of aggression and breaches of international law constitute exceptions to the doctrine of absolute immunity. States can enjoy immunity from suit in all proceedings, including commercial transactions.</p> <p>Waiver: The state may waive its right to assert immunity by demonstrating an “unequivocal submission to the jurisdiction of the forum state at the time when the forum State’s jurisdiction is invoked against the impleaded State” (FG Hemisphere) – i.e. the state takes an active role in the proceedings without claiming immunity. This is illustrated by the case of <i>Hua Tian Long (No.2)</i> [2010] 3 HKC 557 above.</p> <ul style="list-style-type: none"> • Procedure-wise, a waiver must be established at two separate stages: the state must (1) waive its jurisdictional immunity from suit in the forum state; and (2) waive the immunity of its property from execution by the forum state’s processes. • The plaintiff bears the burden of proving that the state has waived its right to immunity, on the balance of probabilities. <p>Moreover, as sovereign or crown immunity applies only to courts, states cannot claim immunity from the jurisdiction of Hong Kong arbitral tribunals. However, the state may still seek to claim immunity from the enforcement of an arbitral award.</p>
5.	What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?
	Not applicable.

a.	<i>What standard will the court apply in the enforcement proceedings when assessing whether the service requirements have been met in the original proceedings against a state?</i>
	Not applicable.
b.	<i>What exceptions may apply where conventional forms of service against a state are impossible, e.g. due to absence of diplomatic relations?</i>
	The only exception would be the voluntary submission to jurisdiction of the state.
c.	<i>What standard will the court apply in the enforcement proceedings when assessing whether the right to representation requirements have been met in the original proceedings against a state?</i>
	Not applicable.
d.	<i>What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?</i>
	Not applicable.
6.	What assets may be subject of enforcement if the claim is against a state and what are the requirements, e.g. enforcement against assets of state-owned entities?
	None.