

---

CHAMBERS GLOBAL PRACTICE GUIDES

---

# Dispute Resolution 2026

---

Definitive global law guides offering  
comparative analysis from top-ranked lawyers

**Hong Kong Sar, China:  
Trends and Developments**

Ralph Sellar, Jason Cheng,  
Shirley Choi and Grace Jia  
Slaughter and May



# HONG KONG SAR, CHINA

---

## Trends and Developments

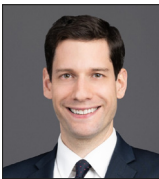
### Contributed by:

Ralph Sellar, Jason Cheng, Shirley Choi and Grace Jia  
**Slaughter and May**

**Slaughter and May** is a leading international law firm with a worldwide corporate, commercial, financing, and disputes practice. The firm's leading disputes and investigations practice is trusted by major household-name companies, Asia conglomerates, financial institutions and individuals to resolve their most demanding disputes, delivering outstanding results in and out of court. With offices in Hong Kong and Beijing, the trilingual Asia practice covers contractual and commercial disputes, ESG, banking litigation, trusts, insolvency, fraud and asset recovery, and complex arbitrations under all major institu-

tional rules including HKIAC, ICC, LCIA, SIAC, ICSID, as well as the UNCITRAL Rules under Hong Kong, English and foreign law. A key strength is the team's multi-specialist capability – many of its lawyers are experienced court litigators and arbitration specialists. This is particularly valuable in arbitration, where the team is adept at obtaining interim measures (eg, injunctions) under court powers to support proceedings. In international cases, the firm partners with a global network of elite “best friend” firms, offering seamless cross-border service.

## Authors



**Ralph Sellar** heads the Asia Disputes and Investigations Group at Slaughter and May. His disputes practice encompasses heavy-weight court litigation and international arbitration under the rules of the HKIAC, LCIA,

ICC and other major arbitral institutions. Recent contentious matters have related to deadlocked joint ventures, supply chain contract disputes and asset tracing. Ralph has particular experience obtaining emergency court relief to protect assets at risk. His clientele includes financial institutions, listed companies, family offices, directors and shareholders. Ralph routinely guides companies (or their boards) through corporate crisis situations, including internal investigations and external enforcement actions in Hong Kong, Mainland China, Taiwan, Indonesia, Malaysia and elsewhere.



**Jason Cheng** is a counsel in the Asia Disputes and Investigations Group at Slaughter and May, and has advised on a range of litigation, arbitration and regulatory matters, including cross-border disputes, shareholder

disputes, employment disputes and construction-related litigation. He is also knowledgeable in data privacy law and advises various Asia clients on the impact of the GDPR and Hong Kong privacy regimes. Jason has previously been seconded to the firm's London office as a senior associate for six months and to an Asia-based global information and communications technology group in its legal department for eight months. He has co-authored several publications regarding data privacy and regulatory frameworks.

# HONG KONG SAR, CHINA TRENDS AND DEVELOPMENTS

Contributed by: Ralph Sellar, Jason Cheng, Shirley Choi and Grace Jia, **Slaughter and May**



**Shirley Choi** is an associate in the Asia Disputes and Investigations Group at Slaughter and May. She has experience in civil litigation, international arbitration, data privacy, employment and regulatory matters.

Shirley acts on both sides of civil litigations (including commercial and contractual disputes, professional negligence claims and land-related matters), advising on regulatory, insurance, data privacy and employment matters. The clients she has assisted range from listed companies, multinational healthcare companies, large leading banking corporations, payment service businesses, technology solution providers to large private hospitals.



**Grace Jia** is an associate in the Asia Disputes and Investigations Group at Slaughter and May. Her practice encompasses litigation, arbitration and regulatory investigations. She routinely acts in shareholder disputes,

insolvency-related disputes and cross-border recognition and enforcement matters. She also has extensive experience in the corporate M&A and capital markets area. Grace worked in the life sciences team of a PRC-based Red Circle firm from 2017 to 2019, during which she advised pharmaceutical and medical device companies on Chinese laws and regulations. Grace is admitted to practise law in Hong Kong, the State of New York and has obtained the legal profession certificate in China.

---

## Slaughter and May

47/F, Jardine House  
1 Connaught Place  
Central  
Hong Kong

Tel: 2521-0551  
Fax: 2845-2125  
Email: [Ralph.Sellar@SlaughterandMay.com](mailto:Ralph.Sellar@SlaughterandMay.com)  
Web: [www.slaughterandmay.com](http://www.slaughterandmay.com)

**SLAUGHTER AND MAY** /

## Introduction and Executive Summary

In the past 12 months, Hong Kong has continued to develop as Asia's leading dispute resolution hub, with recent changes placing particular emphasis on efficiency in resolving cross-border disputes, party autonomy and international alignment. In this update, we discuss the following developments:

- The new Arrangement on Mutual Service of Judicial Documents between Hong Kong and Mainland China represents a meaningful response to long-standing challenges in cross-border litigation and is expected to significantly improve the practical effectiveness of the service of proceedings. This development, together with the new reciprocal enforcement regime between Hong Kong and Mainland China for civil and commercial judgments effective from 29 January 2024, provide Hong Kong with a significant advantage over other jurisdictions in relation to disputes involving parties or assets in Mainland China.
- The Hong Kong courts' approach to deciding winding-up petitions in relation to debt instruments containing arbitration clauses continues to come under scrutiny since the Court of Appeal's 2024 decision in
- *Re Simplicity* and the perceived divergence from the equivalent position under English law in the Privy Council case of
- *Sian Participation*.
- Hong Kong's position as a centre for international mediation has also been strengthened by the establishment of the International Organization for Mediation (the "IOMed"), the first intergovernmental organisation dedicated to mediation and headquartered in the city.
- The recent transition from absolute to restrictive state immunity further aligns Hong Kong with major international dispute resolution jurisdictions, particularly in relation to disputes arising from commercial activities of foreign states.

From the perspective of commercial users of Hong Kong's dispute resolution services, the new reciprocal enforcement regime and streamlined service arrangements with Mainland China reduce procedural friction and enhance the attractiveness of Hong Kong jurisdiction clauses in cross-border contracts. With

the shift to restrictive state immunity, Hong Kong has now become another friendly jurisdiction for parties to enforce contractual and commercial rights against foreign states. This is expected to bring Hong Kong further in line with prevailing international practice and to enhance its status as one of the major international dispute resolution hubs. The establishment of the IOMed offers commercial parties an additional avenue for resolving disputes through mediation supported by procedural protections under the Convention.

Notwithstanding the continued debate about the right approach to handling winding up petitions (which, from a commercial perspective, is a somewhat esoteric point of law), these developments demonstrate Hong Kong's continued status and development as a leading dispute resolution hub as well as the close collaboration between Mainland China and Hong Kong to facilitate Hong Kong's continued development in this role.

## New Arrangement on Mutual Service of Judicial Documents in Civil and Commercial Proceedings Between Hong Kong and Mainland China

Hong Kong serves as an international finance and trading gateway to China and many civil and commercial cases in the Hong Kong courts involve a party based in Mainland China. Litigants in Hong Kong and Mainland China have long faced procedural obstacles in effecting service of documents in cross-border civil and commercial proceedings.

Traditionally, once leave to serve outside the jurisdiction has been granted, service generally had to be effected through court-to-court channels between the High Court of the HKSAR and the relevant Higher People's Court of Mainland China.

A new Arrangement on Mutual Service of Judicial Documents in Civil and Commercial Matters (the "New Arrangement") was signed on 20 April 2026, which materially expands the methods by which judicial documents may be served between Hong Kong and the Mainland. Subject to local legislative implementation in Hong Kong, the New Arrangement is expected to replace the existing Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Proceedings between the Mainland and Hong Kong

Courts signed in 1999 and come into operation by the end of 2026.

Under the New Arrangement, the court-to-court channel is now streamlined. Judicial documents may be transmitted electronically with the same legal effect as originals, and the entrusted court must complete service within two months. Where the judicial documents are not in Chinese, a Chinese translation is required.

The New Arrangement also introduces several additional service methods, including:

- **Service by Post:** Service is treated as effective where the person to be served signs either the acknowledgement of receipt or the receipt for postal delivery.
- **Service by Electronic Means:** This includes service by email, fax or mobile messaging applications, where the person to be served has consented, provided an electronic address in the submitted statement of claim, appeal petition, application, statement of defence, or demonstrated acceptance by conduct.
- **Service Through Lawyers or Authorised Bodies:** Hong Kong law firms or registered foreign law firms may effect service in Hong Kong for Mainland proceedings, while Mainland law firms or notarisation institutions may do so in the Mainland for Hong Kong proceedings.
- **Service by Public Announcement (Where Other Methods Fail):** Service will be deemed completed 60 days after publication of the announcement.

These additional modes are designed to address the practical difficulty of unsuccessful service due to unknown addresses, the absence of parties at registered addresses, or parties whose whereabouts could not be ascertained. The New Arrangement therefore has the potential to make cross-border service between Hong Kong and Mainland China more efficient, flexible and effective in practice.

## **New Reciprocal Enforcement Regime Between Hong Kong and Mainland China**

The Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance (Cap. 645) came into force on 29 January 2024 and applies

to judgments given on or after this date. This development therefore occurred over 12 months ago, but its importance cannot be overstated and its inclusion in this update is warranted. The new regime expands and streamlines the enforceability of Mainland China judgments in Hong Kong, and vice versa, as compared with the previous regime under the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597). In particular, it:

- removes the requirement for an exclusive jurisdiction clause in favour of Mainland courts (for the purpose of enforcement in Hong Kong) or in favour of Hong Kong courts (for the purpose of enforcement in Mainland China), hence allowing for recognition of judgments based on “hybrid” (non-exclusive) jurisdiction clauses in commercial contracts;
- broadens the scope of application beyond contractual disputes to cover a wider range of civil and commercial matters;
- covers not only monetary judgments but also non-monetary judgments, such as orders for specific performance and injunctions; and
- expands the coverage of judgments to those made by lower courts and tribunals which were not covered previously (including the Competition Tribunal, Lands Tribunal, Labour Tribunal, Small Claims Tribunal in Hong Kong, as well as any Primary People’s Court in Mainland China).

To enforce a Mainland China judgment in Hong Kong, the applicant will need to apply to the Hong Kong court for a registration order to register the judgment. Mainland judgments or orders of payment, except rulings given in respect of an interim measure, are registrable. Subject to satisfying the procedural requirements and any setting-aside applications, a registered Mainland judgment is treated as if it were a judgment originally given by the Hong Kong Court of First Instance on the day of registration.

The new regime was recently applied in *HD Hyundai Infracore China Co Ltd v Li Zhiwei* [2025] HKCFI 5714, in which the Hong Kong court confirmed that, as was the position under the old regime, the new regime is intended to be straightforward and with a high degree of certainty, without the need of the Hong Kong court

to review the evidence or findings of, or reasons given by, the Mainland courts. In that case, a part of the enforcement ruling of an Intermediate People's Court was registered, after the court rejected the argument that it was not an "order of payment" or was simply a "ruling given in respect of an interim measure".

The new regime provides a more comprehensive, efficient, and accessible framework for the reciprocal enforcement of civil and commercial judgments in Hong Kong and Mainland China, subject to statutory requirements and exclusions. It is expected that mutual enforcement between Hong Kong and Mainland China will continue to feature, if not become an increasingly important factor, in considering any dispute resolution mechanism to be provided in commercial contracts. Indeed, where a commercial organisation is contracting with a Mainland China-based counterparty, a Hong Kong jurisdiction clause would offer clear advantages over other jurisdiction clauses (such as Singapore or England and Wales jurisdiction clauses) from an enforcement perspective.

## Continued Scrutiny of the Hong Kong Courts' Approach to Winding-Up Petitions Where the Contract is Subject to an Arbitration Clause

In the last few years, there has been significant debate in a number of jurisdictions about how the courts should approach winding up petitions when the relevant debt instrument is subject to an arbitration clause (the question being whether the company courts should defer any dispute – including the enforcement of a debt – to arbitration).

In the 2024 case of *Re Simplicity*, the Hong Kong Court of Appeal proposed a "multifactorial" approach when deciding whether to stay or dismiss a winding-up petition in favour of arbitration. This appeared to settle the position, albeit attracting some commentary from commercial lenders that the test was too "debtor friendly". However, shortly after the decision in *Re Simplicity*, the Privy Council in *Sian Participation* proposed a more stringent standard in holding that a winding-up petition should not be stayed or dismissed unless the debt is genuinely disputed on substantial grounds, regardless of an arbitration clause. A slight divergence has therefore emerged in Hong Kong and other common law jurisdictions, albeit there is a lack

of evidence that this divergence has had any practical impact on the outcome of relevant winding-up petitions.

In this update, we recap the background and the current status of Hong Kong law and consider whether there are likely to be further developments to the law in Hong Kong.

### *The traditional approach*

Traditionally, a creditor will be entitled to a winding-up order unless the petition debt is subject to a bona fide dispute on substantial grounds. In determining whether a dispute is "substantial", an insolvency court will consider whether the debtor's defence has a rational prospect of success – ie, it will examine the substantive merits of the defence as to whether a debt is due, even where the underlying contract contains an arbitration clause.

However, concerns arose that this approach risked undermining parties' agreement to arbitrate by allowing courts to conduct a summary merits review.

### *The Lasmos Shift (2018)*

In *Lasmos Ltd v Southwest Pacific Bauxite (HK) Ltd* [2018] HKCFI 426, the Court of First Instance adopted a new approach. Where a debt is subject to an arbitration agreement, unless there are "wholly exceptional circumstances", the court should generally stay or dismiss the winding-up petition if:

- the debtor disputes the debt;
- there is an arbitration agreement; and
- the debtor has taken steps to commence arbitration.

This approach drew heavily on the English Court of Appeal's position (in *Salford Estates (No. 2) Limited v Altomart Limited* [2014] EWCA Civ 1575) that requiring a court to consider the bona fide of a dispute which is subject to arbitration would be "anomalous" and "contrary to public policy" given the parties' agreement to arbitrate.

## *Clarification by the Hong Kong Court of Appeal (2024)*

In *Re Simplicity & Vogue Retailing (HK) Co., Limited* [2024] HKCA 299 and *Re Shandong Chenming Paper Holdings Ltd* [2024] HKCA 352, the Court of Appeal confirmed that the Hong Kong courts should continue to give effect to the parties' contractual bargain to arbitrate, and set out the following principles:

- The decision to stay or dismiss a winding-up petition is an exercise of the Court's discretion.
- Where a dispute is subject to an arbitration agreement, the Court should take a "multifactorial approach" in considering the exercise of its discretion, taking into account factors such as:
  - (a) the public policy of the legislative scheme for the Court's bankruptcy jurisdiction;
  - (b) the public policy to hold parties to their agreements, including their choice of forum;
  - (c) whether there are countervailing factors (eg, risk of the insolvency affecting third parties or where the debtor's defence borders on being frivolous or is an abuse of process); and
  - (d) whether the Court is satisfied there is a genuine intention to arbitrate; even if no steps have been taken to commence an arbitration, one option is to grant a short stay for such steps, coupled with an undertaking from the debtor.
- In the absence of countervailing factors, the parties ought to be held to their contract (ie, the winding-up petition ought to be dismissed or stayed so the disputed debt can be resolved in arbitration). However, the Court retains the flexibility to deal with the case as the circumstances require.

## *Divergence from English Law*

It is worth noting that the Hong Kong position has since diverged from the English approach following the Privy Council's decision in the English case of *Sian Participation Corp (in liquidation) v Halimeda International Ltd* [2024] UKPC 16. In that case, the Privy Council departed from the English Court of Appeal's decision in *Salford Estates*, holding that, in considering whether to stay a winding-up petition in favour of arbitration, the English courts should consider whether the debt is disputed on genuine and substantial grounds, even where the dispute is subject to an arbitration (or other exclusive jurisdiction) agreement.

The above approach applies in the English courts (and other jurisdictions bound by Privy Council decisions), but not in the Hong Kong courts. There is now an apparent divergence of approach and a perception, compared to other jurisdictions, that it could potentially be more challenging for creditors to petition to wind up insolvent debtors in the Hong Kong courts where the relevant debt instrument or contract contains an arbitration clause. This divergence has attracted significant commentary from practitioners. In this regard, Mr Justice Jonathan Harris of the Hong Kong High Court has recently observed that, in his view, the test in the Hong Kong decision *Lasmos* provides a more principled framework, balancing party autonomy and insolvency principles.

The divergence has also given rise to novel questions before the Hong Kong courts, including how the court should approach an application to restrain foreign insolvency proceedings allegedly commenced in breach of an arbitration agreement where the foreign court adopts the *Sian Participation* approach, requiring the debtor to show a bona fide dispute.

We anticipate that the courts will be faced with further cases testing these boundaries in 2026 and beyond. Moreover, there is no statistical evidence that this legal issue has had any material effect on lenders or the use of arbitration clauses. Indeed, lenders have typically preferred court jurisdiction clauses in debt instruments and there is little to suggest that creditors have been able to effectively deploy an arbitration clause as a "debt dodger's charter" to avoid enforcement in Hong Kong.

## *The Rise in International Mediation*

On 30 May 2025, the Convention on the Establishment of the International Organization for Mediation (the "Convention") was signed in Hong Kong by 33 states as founding members. Established under Article 1 of the Convention, the IOMed is the first intergovernmental organisation dedicated to resolving international disputes through mediation which is headquartered in Hong Kong.

The establishment of the IOMed represents a significant milestone in the development of international dispute resolution. As the first body of its kind, the

IOMed gives institutional expression to Article 33 of the UN Charter, which promotes the peaceful settlement of disputes through means such as negotiation, enquiry and mediation.

The IOMed's mandate spans three distinct categories of disputes: (i) state-to-state disputes; (ii) disputes between a state and a national of another state, commonly referred to as investor-state disputes; and (iii) disputes arising out of or relating to international commercial relationships between private parties. To service this wide range of functions, the IOMed maintains two Panels of Mediators, one dedicated to state-to-state disputes specifically, and a General Panel covering investor-state and commercial disputes. Each contracting state may designate up to five persons to the Panel of State-to-State Mediators and up to twenty persons to the General Panel of Mediators.

The IOMed demonstrated its practical utility shortly after its establishment. One of the IOMed's first reported cases saw it facilitate the resolution of a global maritime dispute involving a charter party chain (ie, a maritime shipping arrangement in which a vessel is hired through a series of successive charter contracts), offering an early indication of its value as an effective forum for international commercial dispute resolution.

In Hong Kong, the IOMed is conferred international legal personality and full legal capacity under the Convention, including the capacity to enter into contracts, own and dispose of property, and to initiate or defend legal proceedings. Consequently, the International Organizations (Privileges and Immunities) (International Organization for Mediation) Order (Cap. 558 sub. leg. Q) (the "Order") is deemed to have come into effect on 29 August 2025. The Order implements the privileges and immunities afforded to the IOMed under the Convention and formally recognises its legal status in Hong Kong. Notably, the Order also extends procedural protections to those participating in the IOMed mediation proceedings: persons appearing as mediators, parties, agents, counsel, witnesses or experts in proceedings concerning state-to-state or investor-state disputes are accorded immunity from personal arrest or detention and from legal process in respect of words spoken or written and all acts

performed in the course of their participation. The selection of Hong Kong as the IOMed's headquarters cements the city's status as a key hub for international dispute resolution and reinforces its broader role in international legal co-operation.

Practitioners should nonetheless be mindful of the current limits of the IOMed's domestic legal effect. Whilst "mediated settlement agreement" is defined under the Mediation Ordinance (Cap. 620) as "an agreement by some or all of the parties to mediation settling the whole, or part, of their dispute", neither the Mediation Ordinance nor the Order provides for an enforcement mechanism for such agreements. Mediated settlement agreements are therefore enforced in Hong Kong on the basis of ordinary contractual principles as legally binding contracts.

The continued growth of international mediation, embodied by the establishment of the IOMed in Hong Kong, nonetheless signals a new and significant chapter in the development of Hong Kong's dispute resolution landscape, with scope for the domestic mediation framework to continue to evolve alongside.

## Transition from Absolute to Restrictive State Immunity

The law on state immunity as applicable to Hong Kong has undergone a significant change with the introduction of the Law of the People's Republic of China on Foreign State Immunity (中华人民共和国外国国家豁免法) ("FSIL"), which came into effect on 1 January 2024.

To recap, following *Democratic Republic of the Congo v FG Hemisphere Associates LLC* (2011) 14 HKCFAR 95, and pursuant to the interpretation made by the Standing Committee of the National People's Congress (NPCSC) in relation to Articles 13 and 19 of the Basic Law of the Hong Kong Special Administrative Region in 2011, it has been settled that the Central People's Government of the People's Republic of China (PRC) has the power to determine the rules or policies on state immunity to be applied in Hong Kong, and Hong Kong courts must give effect to such rules or policies.

Prior to 2024, Hong Kong followed the approach adopted in the PRC, namely the doctrine of absolute

Contributed by: Ralph Sellar, Jason Cheng, Shirley Choi and Grace Jia, **Slaughter and May**

state immunity. Under this doctrine, a foreign state generally enjoys immunity from all suits in the courts of Mainland China and Hong Kong, subject only to limited exceptions such as waiver.

This is to be contrasted with the doctrine of restrictive state immunity, under which foreign states do not enjoy immunity from suit where they are engaged in transactions of a purely commercial nature. The doctrine of restrictive state immunity is adopted in several dispute resolution forums internationally.

The new FSIL implements the doctrine of restrictive state immunity. Under Article 7 of the FSIL, a foreign state does not enjoy immunity from the jurisdiction of the PRC courts in any proceedings arising out of a “commercial activity” between that foreign state and an entity of another state (including the PRC), where the activity takes place within the territory of the PRC, or otherwise has a direct effect within that territory. “Commercial activity” is defined to cover transactions of goods or services, investment, lending or any other act of a commercial nature, as opposed to the exercise of sovereign authority.

---

## CHAMBERS GLOBAL PRACTICE GUIDES

---

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email [Rob.Thomson@chambers.com](mailto:Rob.Thomson@chambers.com)