

Watch out for the Statutory Limitation Period in Hong Kong for Enforcement of PRC Arbitral Award

DENTONS

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In a recent judgment delivered in *Wang Peiji v. Wei Zhiyong* [2019] HKCFI 2593, [2019] HKEC 3446, the Hong Kong Court of First Instance set aside an order to enforce a PRC arbitral award on the ground that the cause of action arising out of the award was time-barred.

The subject award was granted by the Guangzhou Arbitration Commission on 20 April 2009, whereby the Defendant was ordered to pay an outstanding loan sum of RMB 8 million plus interest and costs. In June 2009, the plaintiff commenced proceedings in the Panyu People's Court to enforce the arbitral award. In the succeeding nine years, the plaintiff recovered over RMB 4.7 million from the defendant. The enforcement procedures then came to an end in December 2018 as there were no other assets of the defendant available for execution and the plaintiff could not provide other evidence to the contrary. The plaintiff therefore turned its enforcement efforts to Hong Kong, which were met with resistance from the defendant who asserted that the application had long since become time-barred.

One of the arguments raised by the plaintiff in response is that time must be suspended for the whole of the period in which the plaintiff's (partially successful) enforcement efforts were underway. This however, was rejected by the Deputy Judge who held that Hong Kong law does not provide for time limits to be suspended while the successful party attempts enforcement on the Mainland. It is also noteworthy that the judge made it clear that the length of the limitation period depends on whether the underlying contractual document giving rise to the disputes is a simple contract (for which the six-year time limit applies) or one that was executed under seal (for which the 12-year time limit applies). As such, it was not open to the plaintiff to contend that the longer limitation period shall apply because the award was executed under seal.

This case highlights the importance of paying attention to limitation periods when one decides where and when to commence enforcement proceedings. Whilst it may be the natural approach to first enforce the award in the place where most of the award debtor's assets are believed to be located, an award creditor should further consider whether the expected length of enforcement proceedings may affect its ability to enforce in other jurisdictions. Further, in cases where an existing application for enforcement has lasted for a prolonged period, the award creditor should consider withdrawing or procuring early determination of such application, so that it may apply for enforcement in another jurisdiction prior to the expiry of the relevant limitation period.

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