

**Mainland Judgments in Matrimonial and Family Cases
(Reciprocal Recognition and Enforcement) Ordinance (Cap. 639)**

Frequently Asked Questions

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(I) Scope of the Ordinance

- 1. Does the [Mainland Judgments in Matrimonial and Family Cases \(Reciprocal Recognition and Enforcement\) Ordinance \(Cap. 639\)](#) (the “Ordinance”) apply to any judgment given in a matrimonial or family case by the Mainland and Hong Kong courts at any time? Similarly, does the Ordinance cover any Mainland divorce certificate issued by the civil affairs departments in the Mainland at any time?**

The Ordinance has no retrospective effect. The Ordinance only applies to judgments given by the Mainland and Hong Kong courts in matrimonial or family cases on or after 15 February 2022. Similarly, the Ordinance only applies to divorce certificates issued by the civil affairs departments in the Mainland on or after 15 February 2022.

2. Does the Ordinance cover adoptions made in the Mainland?

No. Adoptions made in the Mainland continue to be given legal effect in Hong Kong pursuant to section 17 of the [Adoption Ordinance \(Cap. 290\)](#).

3. Does Part IX of the [Matrimonial Causes Ordinance \(Cap. 179\)](#) continue to apply to a divorce obtained in the Mainland on or after 15 February 2022?

Please refer to section 61A of the Matrimonial Causes Ordinance (Cap. 179). The recognition mechanism under Part IX of that Ordinance does not apply to a divorce obtained by means of judicial or other proceedings in the Mainland on or after 15 February 2022.

4. Does Schedule 3 to the Ordinance cover Hong Kong court orders for the return or delivery of a child who has been wrongfully removed from Hong Kong to the Mainland or wrongfully retained in the Mainland?

Yes. Schedule 3 to the Ordinance contains a list of orders granted or made by a Hong Kong court. Amongst them, an order in relation to custody that may be made by the court under the enactments mentioned in item 11 of Schedule 3 or in the exercise of its wardship jurisdiction (as mentioned in item 12 of that Schedule) may include an order relating to access to a child or an order for the return or delivery of a child who has been wrongfully removed from Hong Kong to the Mainland or wrongfully retained in the Mainland (other than in the context of an international child abduction case).

5. Does the Ordinance cover conciliatory statements given by a Mainland court in a matrimonial or family case?

Yes. Please refer to section 2 of the Ordinance on the definition of “Mainland Judgment” which means a judgment, ruling or conciliatory statement given by a court in the Mainland but does not include a judgment given by a court in a place outside the Mainland that is recognized in the Mainland under the law of the Mainland.

(II) Applying for registration of specified orders in Mainland Judgments given in matrimonial or family cases

6. How do I make an application for registration of a specified order in a Mainland Judgment given in a matrimonial or family case? What do I need to submit when making such application?

An application for registration of a specified order in a Mainland Judgment given in a matrimonial or family case may be made ex parte to the District Court (Family Court) or, if so directed by it, be made by originating summons.

The application must be supported by an affidavit containing such information and exhibiting such documents (including a sealed copy of the Mainland Judgment, a certificate issued by the Mainland court which gave the relevant Mainland Judgment, etc.) as required by the [Mainland Judgments in Matrimonial and Family Cases \(Reciprocal Recognition and Enforcement\) Rules \(Cap. 639A\)](#) (the “**Rules**”).

The application must also be accompanied by the prescribed fee (currently, the amount is \$1,045; for details, please see Part 6 of and the Schedule to the Rules).

7. Can I make a registration application in relation to any specified orders and at any time?

Registration applications may only be made in relation to specified orders in those Mainland Judgments which are given in matrimonial or family cases on or after 15 February 2022, and which are effective in the Mainland. For what constitutes an “effective Mainland Judgment”, see FAQ 8.

Further, registration applications in relation to care-related orders and maintenance-related orders shall generally be made within a time limit of two years.

8. What is an “effective Mainland Judgment”?

Section 5(1) of the Ordinance provides that a Mainland Judgment is effective if:

- (a) it is enforceable in the Mainland; and

- (b) it is—
- (i) a Mainland Judgment given by the Supreme People’s Court;
 - (ii) a Mainland Judgment of the second instance given by a Higher People’s Court or an Intermediate People’s Court; or
 - (iii) a Mainland Judgment of the first instance given by a Higher People’s Court, an Intermediate People’s Court or a Primary People’s Court, and—
 - (A) no appeal is allowed from the Judgment according to the law of the Mainland; or
 - (B) the time limit for appeal in respect of the Judgment has expired according to the law of the Mainland and no appeal has been filed.

Further, section 5(2) of the Ordinance provides that a Mainland Judgment mentioned in section 5(1)(b) includes a Mainland Judgment given according to the trial supervision procedure of the Mainland.

9. The Ordinance imposes a time limit of two years within which registration applications in relation to care-related orders or maintenance-related orders must be made. What can I do if the time limit has expired?

If the time limit has expired, you may apply to the District Court (Family Court) for permission to make the registration application after the expiry of the 2-year period. Please refer to rule 6(3), rule 7(3) or rule 8(4) of the Rules (as the case may be) for the information that is required to be provided in support of your application for permission.

10. What is the effect of producing a certificate issued by the original Mainland court in respect of the Mainland Judgment?

Pursuant to section 10(2) of the Ordinance, the production of the certificate creates a rebuttable presumption for matters certified in the Certificate, namely, that the Mainland Judgment is given in a matrimonial or family case and is effective in the Mainland (which are requirements for registration applications, see section 7(1) of the Ordinance).

11. If I am not satisfied with a specified order in a Mainland Judgment given in a matrimonial or family case, can I apply to a Hong Kong court to vary such order?

No. A Hong Kong court, as the registering court, does not have power to vary an order granted by the original Mainland court. If you wish to apply to vary an order made by a Mainland court, you should proceed in the Mainland.

12. If, at the time when I make a registration application in relation to a specified order in a Mainland Judgment given in a matrimonial or family case, there are proceedings pending before an adjudicating court in Hong Kong in respect of the same cause of action on which the Mainland Judgment was given and between the same parties, what should I do?

According to section 26 of the Ordinance and rule 5(6)(a) of the Rules, you must notify the adjudicating court of the registration application as soon as the application is made. On receiving the notification, the adjudicating court must order that the pending Hong Kong proceedings be stayed until the adjudicating court makes an order for the pending Hong Kong proceedings to be resumed or terminated.

13. Following on FAQ 12, when will the court make an order for the pending Hong Kong proceedings to be resumed or terminated?

The adjudicating court may make an order for the pending Hong Kong proceedings to be resumed or terminated only in either of the following situations:

- the registration application has been finally disposed of; or
- if any specified order is registered, the time limit for applying to set aside the registration has expired or any setting aside application, if made, has been finally disposed of.

14. Following on FAQ 12, when the pending Hong Kong proceedings are stayed, can the court still grant judicial relief?

Section 26(5) of the Ordinance provides that the adjudicating court may make any order as it considers necessary for the purposes of:

- maintaining or restoring the status quo while the pending Hong Kong proceedings are stayed
- ensuring the welfare and best interests of a person under the age of 18 years
- preventing an irremediable injustice

15. I am a party to a Mainland Judgment given in a matrimonial or family case. If a registration application in relation to a specified order in that Judgment is pending, or if any specified order is registered, can I commence proceedings in Hong Kong in respect of the same cause of action on which the Judgment was given?

According to section 27 of the Ordinance, you may not bring new proceedings in Hong Kong in respect of the same cause of action, except for proceedings under Part IIA of the [Matrimonial Proceedings and Property Ordinance \(Cap. 192\)](#).

If the registration of the specified order has been set aside, you will not be prevented from bringing new proceedings in Hong Kong.

16. Apart from applying for registration under the Ordinance, are there alternative methods by which I can seek assistance from the Hong Kong courts in enforcing specified orders in Mainland Judgments given in matrimonial or family cases?

Hong Kong courts may not entertain any proceedings for the recovery of a sum of money required to be paid or the execution of a relief ordered under a Mainland Judgment in a matrimonial or family case that is given on or after 15 February 2022 and that is effective in the Mainland, other than proceedings in respect of registration applications made under the Ordinance or proceedings for the execution of a specified order which has been registered. Please refer to section 28 of the Ordinance.

(III) Registration of specified orders in Mainland Judgments given in matrimonial or family cases

17. What are the effects of a registration order?

Section 19 of the Ordinance provides that a registered care-related order or maintenance-related order may be enforced in Hong Kong as if it were an order originally made by the registering court, the registering court had jurisdiction to make it and it were made on the day of registration. However, according to section 20 of the Ordinance, action may be taken to enforce a registered care-related order or maintenance-related order only after the time limit for applying to set aside the registration has expired or after any setting aside application, if made, has been finally disposed of.

Similarly, section 24 of the Ordinance provides that a registered status-related order is recognized as valid in Hong Kong only after the time limit for applying to set aside the registration has expired or after any setting aside application, if made, has been finally disposed of.

18. If the Hong Kong court makes a registration order to register a specified order in a Mainland Judgment given in a matrimonial or family case, what follow up actions should the applicant take to notify the other parties to that Mainland Judgment?

The applicant must serve a notice of registration of the specified order on all other parties to the Mainland Judgment. Please see rule 14 of the Rules for the details.

19. I am a party to a Mainland Judgment given in a matrimonial or family case which contains maintenance-related orders where payments or acts are due to be paid or performed on specific dates, when can I make a registration application?

In order to make a registration application in relation to maintenance-related orders, there should have been a default in payment or performance.

Nonetheless, if the registering court makes an order to register a maintenance-related order which requires periodic payments or performances of act, the registration may cover not only periodic payments or performances of acts which have become overdue before the application date, but also cover

periodic payments or acts which have become or will become due on or after the application date, provided that those periodic payments or acts have not yet been made or performed on the date of registration.

(IV) Setting aside the registration of specified orders in Mainland Judgments given in matrimonial or family cases

20. I am a party to a Mainland Judgment given in a matrimonial or family case. I have been notified that a specified order in that Judgment has been registered in Hong Kong. If I am not satisfied with the registration order, when can I make an application to set aside the registration?

The application must be made within the time limit as stated in the registration order. Such time limit is also set out in the notice of registration which the applicant has served on you.

21. What are the grounds upon which the registration of a specified order must be set aside?

According to section 16(1) of the Ordinance, the grounds are as follows:

- a provision in Division 1 or 2 of Part 2 of the Ordinance has not been complied with
- the respondent to the Mainland Judgment was not summoned to appear according to the law of the Mainland
- the respondent to the Mainland Judgment was summoned to appear according to the law of the Mainland, but was not given a reasonable opportunity to make submissions or defend the proceedings
- the Mainland Judgment was obtained by fraud
- the proceedings in which the Mainland Judgment was given were accepted by a court in the Mainland after proceedings in respect of the same cause of action between the same parties were started in a court in Hong Kong

- a court in Hong Kong has given a judgment on the same cause of action between the same parties
- a court in a place outside Hong Kong has given a judgment on the same cause of action between the same parties, and the judgment has already been recognized by a court in Hong Kong
- the recognition of the specified order, or the enforcement of the specified order, is manifestly contrary to the public policy of Hong Kong
- the Mainland Judgment has been reversed or otherwise set aside pursuant to an appeal or a retrial under the law of the Mainland

Further, according to section 16(2) of the Ordinance, if the relevant Mainland Judgment involves a person under the age of 18 years, in deciding whether the recognition or enforcement of the relevant specified order is manifestly contrary to the public policy of Hong Kong, the registering court must take into account the best interests of the person.

22. If the registering court has set aside the registration of a specified order, can I make a new registration application in relation to the same specified order?

According to section 18 of the Ordinance, subject to the exceptions mentioned below, an applicant may not make a further registration application in relation to a specified order if an original registration of such order has been set aside.

The exceptions where a further registration application may be made in relation to the same specified order are:

- where the original registration has been set aside solely on the ground that the relevant Mainland Judgment is not effective in the Mainland, and that Judgment has become effective in the Mainland (see section 18(2) of the Ordinance)
- where the original registration has been set aside solely on the ground that the registration covered such part of the relevant payment or act which had already been made or performed, a further registration application may be made to the extent that it relates to the part of the payment or act required by the order which has not yet been made or performed (see section 18(3) of the Ordinance)

(V) Recognition of Mainland divorce certificates

23. How do I make an application for recognition of a Mainland divorce certificate? What do I need to submit when making such application?

An application for recognition of a Mainland divorce certificate issued by a civil affairs department in the Mainland may be made ex parte to the District Court (Family Court) or, if so directed by it, be made by way of originating summons.

The application must be supported by an affidavit containing such information and exhibiting such documents (including a notarized copy of the Mainland divorce certificate, etc.) as required by the Rules.

The application must also be accompanied by the prescribed fee (currently, the amount is \$1,045; for details, please see Part 6 of and the Schedule to the Rules).

24. Can I make a recognition application in relation to any Mainland divorce certificate and at any time?

Recognition applications may only be made in relation to Mainland divorce certificates which are issued on or after 15 February 2022.

The Ordinance does not provide for a time limit within which a recognition application shall be made.

25. What is the effect of a recognition order?

On the taking effect of a recognition order, the divorce specified in the relevant Mainland divorce certificate is recognized as valid in Hong Kong. However, a recognition order takes effect only after the time limit for applying to set aside the recognition order has expired or after any setting aside application, if made, has been finally disposed of. Please refer to sections 35 and 36 of the Ordinance.

26. If the District Court (Family Court) makes a recognition order to recognize a Mainland divorce certificate, what follow up actions should the applicant take to notify the other party to the divorce specified in the Mainland divorce certificate?

The applicant must serve a notice of the recognition order on the other party to the divorce specified in the Mainland divorce certificate. Please see rule 20 of the Rules for the details.

27. I am a party to a divorce specified in a Mainland divorce certificate. I have been notified that a recognition order has been made by the District Court (Family Court). If I am not satisfied with the recognition order, when can I make an application to set aside the recognition order?

The application must be made within the time limit as stated in the recognition order. Such time limit is also set out in the notice of the recognition order which the applicant has served on you.

28. What are the grounds upon which the recognition order of a Mainland divorce certificate must be set aside?

According to section 33 of the Ordinance, the grounds are as follows:

- the Mainland divorce certificate was obtained by fraud
- the Mainland divorce certificate is invalid
- the recognition of the Mainland divorce certificate is manifestly contrary to the public policy of Hong Kong

(VI) Application for certified copy of and certificate for Hong Kong Judgments given in matrimonial or family cases

29. How can I apply for a certified copy of a Hong Kong Judgment given in a matrimonial or family case?

An application for a certified copy of a Hong Kong Judgment given in a matrimonial or family case may be made ex parte to the Registrar of the Court of Final Appeal, the High Court, or the District Court (depending on the court

which gave the Judgment) on affidavit. For details, please see rule 25 of the Rules.

The application must also be accompanied by the prescribed fee (currently, the amount is \$125; for details, please see Part 6 of and the Schedule to the Rules).

30. Can I make an application in relation to any Hong Kong Judgment given in a matrimonial or family case?

Applications for certified copy of judgments may only be made in relation to those Hong Kong Judgments which are given in matrimonial or family cases on or after 15 February 2022, and which are effective in Hong Kong. For what constitutes an “effective Hong Kong Judgment”, see FAQ 31.

31. What is an “effective Hong Kong Judgment”?

Section 6(1) of the Ordinance provides that a Hong Kong Judgment is effective if it is enforceable in Hong Kong and is given or made by the Court of Final Appeal, the Court of Appeal, the Court of First Instance or the District Court.

Further, section 6(2) of the Ordinance provides that an “effective Hong Kong Judgment” also includes a judgment that may be varied by a court in Hong Kong after the judgment has taken effect according to the law of Hong Kong.

32. If the relevant requirements are met, what documents will be issued to the applicant by the court?

The Registrar of the Court of Final Appeal, the High Court or the District Court (as the case may be) will issue to the applicant:

- a certified copy of the relevant Hong Kong Judgment
- a certificate certifying that the Hong Kong Judgment is given in a matrimonial or family case and is effective in Hong Kong

For details, please see rules 26 and 27 of the Rules.