

Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region (“Arrangement”)

Key features of the Arrangement

The Arrangement provides a mechanism for the reciprocal recognition and enforcement of judgments made by the courts of Hong Kong and the Mainland in civil matrimonial and family cases. The key features of the Arrangement are set out below.

(A) Scope of court judgments covered

2. As regards Hong Kong judgments, the Arrangement covers legally effective judgments¹ made by the Hong Kong courts in civil matrimonial and family cases, which mean:

- (i) a decree absolute of divorce granted under Part III of the Matrimonial Causes Ordinance (Cap. 179);
- (ii) a decree absolute of nullity granted under Part IV of the Matrimonial Causes Ordinance (Cap. 179);
- (iii) an order made under the Matrimonial Proceedings and Property Ordinance (Cap. 192) for maintenance pending the determination of a suit;
- (iv) a maintenance order made under the Guardianship of Minors Ordinance (Cap. 13), the Separation and Maintenance Orders Ordinance (Cap. 16), or Part II or Part IIA of the Matrimonial Proceedings and Property Ordinance (Cap. 192);
- (v) an order for transfer or sale of property made under the Guardianship of Minors Ordinance (Cap. 13), or Part II or Part IIA of the Matrimonial Proceedings and Property Ordinance (Cap. 192);
- (vi) an order made under the Married Persons Status Ordinance (Cap.

¹ See paragraph 12 below.

- 182) with respect to property;
- (vii) an order made under the Matrimonial Proceedings and Property Ordinance (Cap. 192) for the alteration of maintenance agreements during the lives of the parties;
 - (viii) an adoption order made under the Adoption Ordinance (Cap. 290);
 - (ix) a declaration regarding the parentage, legitimacy or legitimation made under the Matrimonial Causes Ordinance (Cap. 179), or the Parent and Child Ordinance (Cap. 429);
 - (x) an order in relation to custody² made under the Guardianship of Minors Ordinance (Cap. 13), the Separation and Maintenance Orders Ordinance (Cap. 16), or the Matrimonial Proceedings and Property Ordinance (Cap. 192);
 - (xi) a custody order³ made in respect of a minor child who has been made a ward of court;
 - (xii) a non-molestation, ouster or re-entry order made under the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189) and an order made under that Ordinance varying or suspending the execution of a custody or access order made in respect of a minor child.

3. As regards Mainland judgments, the Arrangement covers legally effective judgments⁴ made by the Mainland courts in the following types of civil matrimonial and family cases:

- (i) dispute over division of the property of parties to a marriage during the subsistence of the marriage;
- (ii) dispute over divorce;
- (iii) dispute over property after divorce;
- (iv) dispute over invalidity of a marriage;
- (v) dispute over annulment of a marriage;
- (vi) dispute over a matrimonial property agreement;

² This includes 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).

³ See footnote 2.

⁴ See paragraph 13 below.

- (vii) dispute over custody or maintenance of a child arising from cohabitation;
- (viii) dispute over confirmation of parentage;
- (ix) dispute over custody or maintenance of a child;
- (x) dispute over spousal maintenance;
- (xi) dispute over confirmation of an adoptive relationship;
- (xii) dispute over right of guardianship (limited to guardianship of a minor child);
- (xiii) dispute over right of access to a child;
- (xiv) application for an order for protection of a person.

(B) Divorce certificates and agreements or memoranda of dissolution of marriages

4. A divorce certificate issued by a civil affairs department in the Mainland is covered by the Arrangement. In relation to the Hong Kong side, the Arrangement applies correspondingly by reference to an agreement or memorandum for dissolution of a marriage under Part V or Part VA of the Marriage Reform Ordinance (Cap. 178).

(C) Property adjustment

5. The Arrangement covers orders *in personam* for transfer of property and for sale of property.

6. Noting that the concept of property ownership in a marriage under Mainland law is different from that under Hong Kong law, the Arrangement includes a provision to the effect that a Mainland judgment vesting a property in one party is deemed in Hong Kong to be an order for transfer of the property from one party to the other.

(D) Variation of judgments

7. When a Mainland court or a Hong Kong court is adjudicating an

application for recognition and enforcement of a judgment made by the original court of the other place, it does not have power to vary that judgment.

(E) Grounds for refusal of recognition and enforcement of judgments

8. The Arrangement provides that the court shall refuse to recognise and enforce a judgment if, having examined the evidence adduced by the respondent to show any of the following, it is satisfied that:

- (i) the respondent was not lawfully summoned in accordance with the law of the place of the original court; or although the respondent was lawfully summoned, the respondent was not given a reasonable opportunity to make representations or defend the respondent's case;
- (ii) the judgment was obtained by fraud;
- (iii) the judgment was rendered in an action which was accepted by a court of the requesting place after a court of the requested place has already accepted an action on the same dispute;
- (iv) a court of the requested place has rendered a judgment on the same dispute, or has recognised and enforced a judgment on the same dispute given by a court of another country or place.

9. In addition, where a Mainland court considers that the recognition and enforcement of a judgment given by a Hong Kong court is manifestly contrary to the basic principles of the law of the Mainland or the social and public interests of the Mainland, or where a Hong Kong court considers that the recognition and enforcement of a judgment given by a Mainland court is manifestly contrary to the basic principles of the law of Hong Kong or the public policy of Hong Kong, the judgment shall not be recognised or enforced. Where an application for recognition and enforcement of a judgment concerns a minor child, the court shall fully consider the best interests of the minor child in assessing and deciding whether to recognise and enforce the judgment in accordance with this provision.

(F) Levels of courts covered

10. In relation to the Hong Kong side, the Arrangement covers judgments given by the Court of Final Appeal, the Court of Appeal and the Court of First Instance of the High Court and the District Court.

11. In relation to the Mainland side, the Arrangement covers judgments given by the Supreme People's Court, a High People's Court, an Intermediate People's Court and a Primary People's Court.

(G) Legally effective judgments

12. In relation to the Hong Kong side, a legally effective judgment means a judgment given by the Court of Final Appeal, the Court of Appeal and the Court of First Instance of the High Court and the District Court which is legally effective, including any order that may be varied after a judgment has taken effect in accordance with the law of Hong Kong⁵.

13. In relation to the Mainland side, a legally effective judgment means:

- (i) a judgment of the second instance;
- (ii) a judgment of the first instance from which no appeal is allowed according to law or no appeal has been filed by the expiry of the statutory time limit for appeal; and
- (iii) the above types of judgments given in accordance with the trial supervision procedure.

(H) Procedures for application for recognition and enforcement and related matters

14. The Arrangement provides that the time limit, procedures and manner for making an application for recognition and enforcement of a judgment shall be governed by the law of the requested place.

⁵ For example, the Hong Kong courts may exercise powers conferred under the relevant Ordinances to make orders to vary custody orders or maintenance orders which have taken effect.

15. The Arrangement also provides that, where the respondent has property in both the Mainland and Hong Kong which may be subject to enforcement, the applicant may file applications for enforcement with the courts of the two places respectively. The total amount to be recovered from enforcing the judgment in the courts of the two places respectively shall not exceed the amount determined in the judgment.

Department of Justice

March 2022

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