

內地與香港司法法律規則銜接高峰論壇

Forum on the Interface of Judicial and Legal Rules between Mainland and Hong Kong

最高人民法院及香港特別行政區政府律政司合辦

Co-organised by the Supreme People's Court and the Department of Justice of the HKSARG

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

《內地婚姻家庭案件判決(相互承認及強制執行)條例》 (第639章)

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內地與香港特別行政區法院婚姻家庭案件相互認可和強制執行新機制

New mechanism for reciprocal recognition and enforcement in matrimonial and family cases between the Courts of Mainland and the Hong Kong Special Administrative Region



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OUTLINE 內容大綱

Part I: Background

第一部分：背景

Part II: Mechanisms of the Ordinance

第二部分：《條例》下的各項機制

- A. *Registration and enforcement of Mainland judgments in Hong Kong*
在香港登記和強制執行內地判決
- B. *Recognition of Mainland divorce certificates in Hong Kong*
在香港承認內地離婚證
- C. *Facilitating recognition and enforcement of Hong Kong judgments in the Mainland*
利便在內地尋求承認和強制執行香港判決

Part III: Discussions on the Arrangement and Ordinance

第三部分：有關《安排》與《條例》的探討

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PART I. Background

第一部分：背景

- On **20 June 2017**, the supreme People's Court and the HKSAR signed the *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**”).

在**2017年6月20日**，香港與最高人民法院簽訂了《關於內地與香港特別行政區法院相互認可和執行婚姻家庭民事案件判決的安排》（“《安排》”）。

- In order to give effect to the Arrangement, the Department of Justice kick started the legislative process. *The Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance* (Cap. 639) (“**Ordinance**”) was enacted in May 2021.

為了實施安排。律政司展開立法工作，《內地婚姻家庭案件判決(相互承認及強制執行)條例》(第639章)（“《條例》”）於去年5月獲得通過。

The Chief Judge of the High Court made the *Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Rules* (Cap. 639A) (“**Rules**”), which complemented the operation of the mechanisms established by the Ordinance.

為配合《條例》下所訂明機制的運作，高等法院首席法官訂立了《內地婚姻家庭案件判決(相互承認及強制執行)規則》(第639A章)（“《規則》”）。

- The Ordinance and the Rules come into operation on 15 February 2022.** The Arrangement also come into operation **on the same day.**

《條例》及《規則》於**2022年2月15日**實施。

《安排》亦於同日實施。

內地與香港特別行政區法院婚姻家庭案件相互認可和強制執行新機制

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Part II. Mechanisms of the Ordinance

第二部分：《條例》下的各項機制

- The Ordinance provides for **mechanisms** in respect of the following:

《條例》旨在就以下各項訂明機制：

- A. **Registration and enforcement *in Hong Kong* of specified orders in effective Mainland judgments** given in matrimonial or family cases

在香港登記和強制執行生效的內地婚姻或家庭案件判決中的指明命令

Notes
備註

The term “Mainland judgment” includes a Mainland conciliatory statement.

根據《條例》第2條釋義，“內地判決”一詞包括“判決、裁定和調解書...”

- B. **Recognition *in Hong Kong* of Mainland divorce certificates**

在香港承認內地離婚證

- C. **Facilitation of recognition and enforcement *in the Mainland* of Hong Kong judgments** given in matrimonial or family cases

利便在內地尋求承認和強制執行香港婚姻或家庭案件判決

內地與香港特別行政區法院婚姻家庭案件相互認可和強制執行新機制

New mechanism for reciprocal recognition and enforcement in matrimonial and family cases between the Courts of Mainland and the Hong Kong Special Administrative Region

II. A. Registration & Enforcement of Mainland Judgments in HK

II.A. 在香港登記和強制執行內地判決

Procedure for recognition and enforcement

承認和強制執行的程序

- Similar to mechanism under Mainland Judgments (Reciprocal Enforcement) Ordinance (**Cap.597**).
與《內地判決(交互強制執行)條例》(第597章)所訂的機制相若。
- 3 Steps: 三個步驟:
 1. **Ex parte application to District Court** for registration of **specified order** in Mainland Judgment.
向區域法院提出單方面申請，以登記內地判決中的指明命令。
 2. The other party to the Mainland judgment may apply to **set aside the registration** within the **period specified** by the Hong Kong court.
內地判決的另一方可在香港法院指明的限期內，申請將登記作廢。
 3. Specified order may be **enforced** in Hong Kong *as if* originally **made by the registering court** on the **day of registration**.
指明命令可在香港被強制執行，猶如由登記法院在登記當日原先作出。

內地與香港特別行政區法院婚姻家庭案件相互認可和強制執行新機制

New mechanism for reciprocal recognition and enforcement in matrimonial and family cases between the Courts of Mainland and the Hong Kong Special Administrative Region

II. A. Registration & Enforcement of Mainland Judgments in HK

II.A. 在香港登記和強制執行內地判決

- There are **three (3) categories** of **specified orders** in *Mainland judgments* given in a **matrimonial or family case**:

在婚姻或家庭案件作出的內地判決中的**指明命令**，可分為**三類**：

☞ Schedule 2

☞ 附表2

1. Status-related orders 狀況相關命令

- E.g. orders granting divorce, annulment of marriage, etc.
例如：關於批准離婚的命令、撤銷婚姻的命令等

2. Care-related orders 看顧相關命令

- E.g. orders in relation to custody of or right of access, etc.
例如：關於撫養權、探望權的命令等

3. Maintenance-related orders 贍養相關命令

- E.g. orders in relation to maintenance of a person, spousal maintenance, division of property between parties to a marriage, etc.
例如：關於撫養費、夫妻之間扶養、婚姻雙方財產分割的命令

內地與香港特別行政區法院婚姻家庭案件相互認可和強制執行新機制

New mechanism for reciprocal recognition and enforcement in matrimonial and family cases between the Courts of Mainland and the Hong Kong Special Administrative Region



II. A. Registration & Enforcement of Mainland Judgments in HK

II.A. 在香港登記和強制執行內地判決

Examples of *Mainland judgments* given in **matrimonial or family cases**
在婚姻或家庭案件中作出的**內地判決**的例子

Please refer to Schedule 1 to Cap 639 for the English terms.

☞ Section 3

☞ 第3條

☞ Schedule 1

☞ 附表1

- ✓ 婚內夫妻財產分割糾紛案件
- ✓ 離婚糾紛案件
- ✓ 離婚後財產糾紛案件
- ✓ 婚姻無效糾紛案件
- ✓ 撤銷婚姻糾紛案件
- ✓ 夫妻財產約定糾紛案件
- ✓ 同居關係子女撫養糾紛案件

- ✓ 親子關係確認糾紛案件
- ✓ 撫養糾紛案件
- ✓ 夫妻之間扶養糾紛案件
- ✓ 未成年子女監護權糾紛案件
- ✓ 探望權糾紛案件
- ✓ 申請人身安全保護令案件

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II. A. Registration & Enforcement of Mainland Judgments in HK

II.A. 在香港登記和強制執行內地判決

Notes

備註

- **Adoptions** in the Mainland will continue to be given legal effect in Hong Kong pursuant to **section 17 of the Adoption Ordinance (Cap. 290)**.
內地作出的領養將繼續依據《領養條例》(第290章)第17條的規定在香港獲得法律效力。
- According to Schedule 4 to the Ordinance, the “recognition” mechanism under **Part IX of the Matrimonial Causes Ordinance (Cap.179)** will no longer apply to divorces obtained in the Mainland *upon commencement of the Ordinance*.
根據《條例》附表4，當《條例》生效時，《婚姻訴訟條例》(第179章)第IX部的“承認”機制將不再適用於在內地獲准的離婚。



II.A.1. Application for Registration

II.A.1. 提出登記申請

A party to a Mainland judgment may make a registration application to the District Court to register a specified order if the Mainland judgment is:

如果內地判決符合以下情況，內地判決的一方可向區域法院就指明命令提出登記申請：

☞ Section 7

☞ 第7條

- ① given in a matrimonial or family case;
在婚姻或家庭案件中作出；
- ② given on or after the commencement date of the Ordinance; and
在《條例》生效日期當日或之後作出；及
- ③ effective *in the Mainland*.
在內地生效。

Notes
備註

Other than proceedings in respect of registration applications made under the Ordinance, or for the execution of a specified order which has been registered, 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 an effective Mainland Judgment in a matrimonial or family case given on or after 15 February 2022. 就2022年2月15日當日或之後作出並生效的內地婚姻或家庭案件判決而言，除了根據《條例》而提出的登記申請，或尋求執行已登記的指明命令的法律程序外，香港法院或法庭不得受理任何尋求追討該判決規定須支付的款項的，或任何尋求執行該判決所判給的濟助的法律程序。

☞ Section 28

☞ 第28條

II.A.1. Application for Registration

II.A.1. 提出登記申請

When to make a registration application?

什麼時候可以提出登記申請？

☞ Section 7

☞ 第7條

Status-related orders 狀況相關命令

- Generally, registration application may be made at *any time*.
一般而言，可在*任何時候*提出登記申請。

☞ Section 8

☞ 第8條



II.A.1. Application for Registration

II.A.1. 提出登記申請

Care-related orders and Maintenance-related orders

看顧相關命令以及贍養相關命令

- Generally, registration application may be made **within 2 years**, subject to the District Court's **permission** to apply out of time. How the 2-year is counted depends on the type of orders.
一般而言，可在**兩年內**提出登記申請，除非區域法院批准逾期申請。兩年期限的計算視乎何種命令而定。
- For **maintenance-related orders** that requires **periodic** payment or performance of an act, the registration may also cover **obligations** which are **due on or after application date** and which are **not yet paid or performed**.

就要求定期支付款項或履行作為的贍養相關命令而言，登記亦可涵蓋在申請日當日或之後才到期而尚未支付或履行的責任。

☞ Section 11

☞ 第11條

II.A.2. Application for Setting Aside

II.A.2. 提出作廢申請

- A party to the Mainland judgment (other than the party who applied for registration) may **apply to set aside** the registration of a specified order **within the period specified by the Hong Kong court.** ☞ Section 15
☞ 第15條

內地判決的一方（申請登記的一方除外）可在香港法院指明的限期內提出申請，尋求將指明命令的登記作廢。
- **Grounds** for setting aside include: 將登記作廢的理由包括：☞ Section 16
☞ 第16條
 - ✓ Respondent to the Mainland judgment was **not summoned** to appear according to Mainland law 內地判決的答辯人沒有按照內地法律被傳召出庭
 - ✓ Respondent to the Mainland judgment summoned but **not given reasonable opportunity to defend** 內地判決的答辯人被傳召出庭，但並未獲得合理機會答辯
 - ✓ Judgment was obtained by **fraud** 判決是以欺詐手段取得
 - ✓ Recognition or enforcement is **manifestly contrary to public policy** of Hong Kong; when the order involves a **person under 18**, must take into account the **best interests** of the person 承認或強制執行該命令明顯違反香港的公共政策；亦須考慮未滿18歲的人的最佳利益

內地與香港特別行政區法院婚姻家庭案件相互認可和強制執行新機制

New mechanism for reciprocal recognition and enforcement in matrimonial and family cases between the Courts of Mainland and the Hong Kong Special Administrative Region

II.A.3. Effect of Registration

II.A.3. 登記的效果

In respect of **status-related order**

就狀況相關命令而言

☞ Section 24

☞ 第24條

- The order is recognized as valid in Hong Kong.

命令獲承認在香港有效。

In respect of **care-related order and maintenance-related order**

就看顧相關命令及贍養相關命令而言

☞ Section 19

☞ 第19條

- The order may be **enforced** in Hong Kong as if it were an order originally made by the registering court on the day of registration.

命令可在香港強制執行，猶如該命令是由登記法院在登記當日原先作出。



II.A.4. When the Registration Orders Take Effect

II.A.4. 登記令何時生效

- **An action to enforce such orders may be taken only after the expiry of the period within which an application may be made to set aside the registration of the order, or after the setting aside application has been finally disposed of, as the case may be.**
- 一方只可在申請將該命令的登記作廢的限期屆滿之後、或在作廢申請了結之後（視乎情況而定），方可採取行動，強制執行該命令。

☞ Section 20

☞ 第20條



II.A.5. Preventing Parallel Proceedings

II.A.5. 防止平行法律程序

(a) Pending HK proceedings (Section 26)

(a) 正在進行的香港法律程序 (第26條)

The applicant must **inform** the adjudicating court
申請人須**知會**審理法院

The adjudicating court must order the **HK proceedings** to be **stayed**.
審理法院須命令**中止**有關**香港法律程序**。

The HK proceedings are stayed **until** the adjudicating court **orders** the proceedings (or any part of it) to be **resumed** or **terminated**.
香港法律程序中止，直至審理法院命令**恢復**或**終止**該法律程序（或其任何部分）為止。

The applicant makes a **registration application** in relation to any specified order in a Mainland Judgment given on a cause of action between particular parties

就與訟各方之間的某訴訟因由，有內地判決作出，而申請人就該判決中的指明命令提出**登記申請**

HK proceedings are **pending** before an adjudicating court in Hong Kong in respect of the *same cause of action* between the *same parties*, and *the Part IIA of Cap.192 does not apply to the HK proceedings*
有法律程序就**相同的**各方之間的**同一**訴訟因由，有待香港法院審理，且《婚姻法律程序與財產條例》(Cap 192)第IIA部不適用於該香港法律程序

The adjudicating court may make orders for **interim reliefs**, such as orders for the purpose of **maintaining or restoring the status quo**.
審理法院可作出**臨時濟助**命令，例如**為維持現狀或恢復原狀的目的**作出臨時濟助命令。

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(b) Restriction on bringing new proceedings in HK (Section 27)

(b) 限制在香港提起新的法律程序 (第27條)

The applicant makes a **registration application**, and the registration application is **pending**
申請人提出**登記申請**，而登記申請待決



The specified order in the relevant Mainland Judgment is **registered**
有關內地判決中的指明命令已獲**登記**

A party to the Mainland Judgment intends to **bring proceedings in Hong Kong** in respect of the *same cause of action* between the *same parties*

內地判決的一方擬在香港法院就**相同的各方之間的同一訴訟**因由提起法律程序

Note: The Hong Kong proceedings shall **not** be proceedings under **Part IIA of Matrimonial Proceedings and Property Ordinance (Cap. 192)**.

備註：該香港法律程序不得適用《**婚姻法律程序與財產條例**》(第192章)第IIA部。



The party may **not** bring such proceedings in Hong Kong.
該一方**不得**在香港法院提起有關法律程序

內地與香港特別行政區法院婚姻家庭案件相互認可和強制執行新機制

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II.B. Recognition of Mainland Divorce Certificates in HK

II.B. 在香港承認內地離婚證

Application for recognition 提出申請

- A party to a divorce specified in a **Mainland divorce certificate issued on or after the commencement date** of the Ordinance may make an application to the **District Court**.

☞ Section 29
☞ 第29條

在《條例》生效日期當日或之後發出的內地離婚證中指定的離婚的一方
可向區域法院提出申請。



II.B. Recognition of Mainland Divorce Certificates in HK

II.B. 在香港承認內地離婚證

Setting aside the recognition order 將承認令作廢

- **The other party to the divorce may apply to set aside the recognition order within the period specified by the District Court.** 離婚的另一方可在區域法院指明的限期內提出申請，將承認令作廢。
☞ Section 32
☞ 第32條
- **Grounds for setting aside are: 將承認令作廢的理由為：**
 - ✓ The divorce certificate was obtained by **fraud** 離婚證是以欺詐手段取得
 - ✓ The divorce certificate is **invalid** 離婚證屬無效
 - ✓ Recognition is **manifestly contrary to public policy of Hong Kong** 承認離婚證明顯違反香港的公共政策
☞ Section 33
☞ 第33條



II.B. Recognition of Mainland Divorce Certificates in HK

II.B. 在香港承認內地離婚證

Notes

備註

- The Hong Kong court **only recognizes the validity of the divorce** specified in the Mainland divorce certificate, **but not** the ancillary agreement between the parties on the **child support or disposal of property**.

香港法院僅認可內地離婚證上載明的“離婚”這一身份關係的效力，不涉及雙方就子女撫養、財產處分所達成的協議的認可與執行。





II.C. Facilitating Recognition and Enforcement of HK Judgments in the Mainland

II.C. 利便在內地尋求承認和強制執行香港判決

- A party to an **effective** Hong Kong judgment given:

以下生效香港判決的一方：

- in a **matrimonial or family case**; and
在婚姻或家庭案件中作出；及
- **on or after commencement date** of the Ordinance,
在《條例》生效日期當日或之後作出，

may **apply** to the relevant Hong Kong court for a **certified copy** of the *Hong Kong judgment*.

可向有關香港法院申請該香港判決的經核證文本。

☞ Section 37

☞ 第37條

☞ Section 38

☞ 第38條

- The court **must also issue** a **certificate** certifying that the relevant **Hong Kong judgment**:

香港法院亦須發出證明書，以證明該香港判決：

- is given in a **matrimonial or family case**; and
在婚姻或家庭案件中作出；及
- is effective *in Hong Kong*.

在香港生效。

☞ Section 39

☞ 第39條





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II.C. Facilitating recognition and enforcement of HK judgments in the Mainland

II.C. 利便在內地尋求承認和強制執行香港判決

Examples of *Hong Kong judgments* given in matrimonial or family cases

在婚姻或家庭案件中作出的香港判決的例子

Please refer to Schedule 3 to Cap 639 for the English terms.

- 離婚絕對判令、婚姻無效絕對判令；
- 關於管養的命令；
- 贍養令、財產轉讓令或出售財產令；
- ✓ 根據《未成年人監護條例》(第13章)作出；或
- 領養令；
- ✓ 根據《分居令及贍養令條例》(第16章)作出；或
- 關於某人的父母的身分或婚生地位的宣告；
- ✓ 根據《婚姻法律程序與財產條例》(第192章)作出；或
- 根據《家庭及同居關係暴力條例》(第189章)發出的強制令；
- ✓ 就受法院監護的未滿18歲的人作出。

☞ Section 4

☞ 第4條

☞ Schedule 3

☞ 附表3



內地與香港特別行政區法院婚姻家庭案件相互認可和強制執行新機制

New mechanism for reciprocal recognition and enforcement in matrimonial and family cases between the Courts of Mainland and the Hong Kong Special Administrative Region



II.C. Facilitating recognition and enforcement of HK judgments in the Mainland

II.C. 利便在內地尋求承認和強制執行香港判決

Examples of *Hong Kong judgments* given in matrimonial or family cases

在婚姻或家庭案件中作出的香港判決的例子

➤ 關於管養的命令包括：

✓ 關於探視的命令；

✓ 規定交還或交付被不當地遷移到內地或不當地扣留在內地的兒童的命令。

Highlight
亮點

☞ Para. 19 of Explanatory Memorandum

☞ 摘要說明第19段



Part III: Discussions on the Arrangement and Ordinance

第三部分：有關《安排》與《條例》的探討

Different Legal Terms in Mainland and Hong Kong 兩地不同的法律術語

法律術語	內地	香港
“撫養”、 “扶養”、 “贍養” 和 “管養”	<ul style="list-style-type: none">“撫養”一般用於長輩對晚輩的養育，例如父母對於子女的撫養。“扶養”一般用於平輩之間，例如夫妻之間，以及兄弟姐妹之間。“贍養”一般用於晚輩對長輩的供養，例如子女對於父母的贍養。	“撫養”或者“管養”(Custody)：指某兒童的父母的一籃子父母的權利及責任。母親跟父親一樣，對子女有同樣的權利和權限：《未成年人監護條例》(第13章)第3(1)(b)條。當兒童的父母離婚時，法院須在父母之間劃分這一籃子權利及權能。於離婚的法律程序中，法庭可作出命令向僅一名父或母頒授管養、照顧及管束的權利，或作出命令向父母雙方頒授共同管養權，而向僅一名父或母頒授照顧及管束的權利。
“監護” 和 “管養”	<ul style="list-style-type: none">“監護”一般指的是對無民事行為能力人和限制民事行為能力人的人身、財產和其他合法權益進行監督、管理和保護。	<ul style="list-style-type: none">“監護權”和“管養權”同樣指父母對子女所享有的一籃子權利和權能，但兩者用於不同的情況。“監護權(guardianship)”通常是指兒童與監護人法律上的關係。例如香港《未成年人監護條例》(第13章)中的監護人據此在兒童的父母去世後對兒童行使父母權利和權能。這與內地《民法典》第27條中的“監護”有相似之處。“管養權(custody)”通常是指在婚姻及其他有關法律程序中，法院授予父母在離婚後對子女的同住管養、日常照顧和管束的權利。

Part III: Discussions on the Arrangement and Ordinance

第三部分：有關《安排》與《條例》的探討

Discussion on the recognition mechanism under Part IX of the Matrimonial Causes Ordinance (Cap.179)

關於《婚姻訴訟條例》（第179章）第IX部下的承認機制的探討

There is a view that the old mechanism under the Matrimonial Causes Ordinance is more convenient and easier, because a mainland divorce judgment could be recognized "automatically" without any special registration procedure. Is the registration and recognition system for divorce judgments/certificates under the new mechanism a step backwards when compared to the old mechanism, since it requires a registration procedure?

和《婚姻訴訟條例》比較，《婚姻訴訟條例》的承認機制無需登記程序，比較像是“自動承認”外地離婚，好像更加簡單快捷。新承認機制必須先登記才認可，這是不是立法的倒退？



Part III: Discussions on the Arrangement and Ordinance

第三部分：有關《安排》與《條例》的探討

Discussion on the recognition Mechanism under Part IX of the Matrimonial Causes Ordinance

(Cap.179) 關於《婚姻訴訟條例》（第179章）第IX部下的承認機制的探討

終審法院首席法官轄下的家事訴訟程序規則工作小組《中期報告及諮詢文件》指出：“280. 現時並無就根據《婚姻訴訟條例》第IX部申請將其外地離婚或合法分居取得承認的人士訂定條文……”

從香港法院的判決可見，第179章第IX部的引用，一般而言是出現在雙方正在進行的婚姻家事訴訟程序中。第179章第IX部沒有程序可以讓當事人向法院申請承認其在外地取得的離婚。這亦是香港終審法院首席法官轄下的家事訴訟程序規則工作小組認為第IX部的承認機制需要完善的地方，而第639章則有明確程序供當事人向法院申請承認其在外地取得的離婚。



Part III: Discussions on the Arrangement and Ordinance

第三部分：有關《安排》與《條例》的探討

Discussion on the recognition Mechanism under Part IX of the Matrimonial Causes Ordinance (Cap.179) 關於《婚姻訴訟條例》（第179章）第IX部下的承認機制的探討

The CFA Chief Justice's Working Party on Family Procedure Rules pointed out in Interim Report and Consultative Paper that “280. No provision is made for a person to apply to the court to have his/her overseas divorce or legal separation recognized under Part IX of the MCO……” According to the judgments of Hong Kong courts, Part IX of the MCO is generally referred to in an ongoing matrimonial and family case, and there is **no separate procedure for a person to apply for the recognition of his or her overseas divorce, whereas there is a recognition system with clear court rules under Cap 639.**



Part III: Discussions on the Arrangement and Ordinance

第三部分：有關《安排》與《條例》的探討

To conclude, the Arrangement and the Ordinance can

- alleviate the need for parties to bring separate lawsuits in the courts of the Mainland and Hong Kong for the same dispute,
- enable them to obtain timely and effective judicial reliefs and more effectively protect their rights,
- saves time and costs and reduce emotional stress.

總括而言，《安排》與《條例》可

- 免除當事人就同一爭議在內地和香港的法院分別提出訴訟的需要，
- 讓他們能夠適時獲得有效的司法濟助，更有效保障他們的權利，
- 節省時間和費用，減輕精神壓力。

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內地與香港司法法律規則銜接高峰論壇

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最高人民法院及香港特別行政區政府律政司合辦

Co-organised by the Supreme People's Court and the Department of Justice of the HKSARG

THANK YOU!

謝謝!



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