

Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance

(Cap. 645)



Department of Justice
The Government of the Hong Kong
Special Administrative Region

The Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance (Cap. 645) ("**Ordinance**") comes into operation on **29 January 2024**. It implements the "Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region" ("**Arrangement**") signed between the Supreme People's Court and the Government of the Hong Kong Special Administrative Region on 18 January 2019.

▶ **Features of the Arrangement:**

- ✔ Establishes a more comprehensive mechanism for reciprocal recognition and enforcement of judgments ("**REJ**") in a wide range of **civil and commercial matters** between Hong Kong and the Mainland
- ✔ Covers effective Mainland and Hong Kong judgments in civil and commercial matters including those given in respect of certain types of disputes over **intellectual property rights**
- ✔ Covers both **monetary and non-monetary reliefs**

▶ **Impacts of the Arrangement:**

- ✔ Reduces the need for re-litigation of the same disputes in the courts of both Hong Kong and the Mainland
- ✔ Offers better protection to parties' interests
- ✔ Renders Hong Kong to be the first jurisdiction to have an arrangement with the Mainland on REJ with such a wide coverage, reflecting the unique advantages of "one country, two systems".
- ✔ Enhances Hong Kong's competitiveness as a regional intellectual property trading centre as well as a regional centre for international legal and dispute resolution services

The Ordinance establishes the following mechanisms:

- 1 The registration in Hong Kong of effective Mainland judgments in civil or commercial matters [**see pages 3 – 5**]
- 2 The application for certified copies of and certificates for effective Hong Kong judgments in civil or commercial matters, which facilitates parties in seeking recognition and enforcement of the Hong Kong judgments in the Mainland [**see page 6 – 7**]

Disclaimer: The information provided in this leaflet is for general information purpose only and does not, and is not intended to, constitute any legal advice. You may consider it helpful in protecting your interests by seeking legal advice or instructing a lawyer before making applications under the Ordinance or taking any action under the Arrangement and the relevant judicial interpretation promulgated by the Supreme People's Court.

Registration of Mainland judgments in civil or commercial matters in Hong Kong

Q1. What benefit does it bring to register a Mainland judgment in Hong Kong?

A registration (subject to any setting aside application) would render the registered Mainland judgment as enforceable in Hong Kong as if it were a judgment originally given by the Court of First Instance of the High Court on the day of registration.

Yet, a Mainland judgment registrable under the Ordinance, regardless of whether it has been registered or in the process of being registered, is recognized in Hong Kong as conclusive in proceedings in respect of the same cause of action between the same parties. It would imply that no further litigation could be brought against the other party for the same cause of action in Hong Kong.

Q2. What kind of Mainland judgment is registrable under the Ordinance?

Not all Mainland judgments are registrable under the Ordinance. Before initiating an application, you should consider whether the relevant Mainland judgment is registrable under the Ordinance. Some major criteria include:

► Nature of proceedings in which the judgment was given:

- civil or commercial in nature under Mainland law; and
- criminal in nature under Mainland law, and the judgment contains an order for the payment of a sum of money in respect of compensation or damages by a party to the proceedings.

► Timing of the judgment: on or after 29 January 2024

► **Time limit for registration:** Within **two years** from a **default** by the other party in complying with the Mainland judgment's requirement (such as a failure to pay a sum of money or perform an act)

► The judgment is effective in the Mainland:

- The judgment was given by the Supreme People's Court
- The judgment was given at second instance by a High People's Court or an Intermediate People's Court
- If the judgment was given at first instance by a High People's Court, an Intermediate People's Court or a Primary People's Court: it has to be further shown that the judgment cannot be appealed under Mainland law, or the time limit for appeal has expired and no appeal has been filed

Further, some judgments are not registrable under the Ordinance. Examples include judgments:

- in respect of **excluded matrimonial or family cases** (such as divorce, custody or maintenance of a child, etc.);
(Such judgments may be registrable under Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639).)
- in respect of **excluded intellectual property cases** (such as tortious disputes over infringements of invention patents or utility model patents, etc.);
- in respect of matters relating to **insolvency or bankruptcy**; or
(Recognition of and assistance to certain Mainland administrators may be obtained pursuant to the common law.)
- pursuant to "**choice of court agreements**" made before **29 January 2024**.
(The Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) will continue to apply to these judgments.)

Q3. I want to register a Mainland judgment in Hong Kong. What should I do?

You should consult both Mainland and Hong Kong lawyers to know your legal position.

To get a preliminary idea of your role as an “**applicant**” in applying for registering a Mainland judgment in Hong Kong, you may refer to the flowchart below which summarizes the registration procedure. In the flowchart, a “**respondent**” refers to a person against whom the registered judgment may be enforced.

Q4. Someone has obtained a Mainland judgment against me. What should I do?

You should consult both Mainland and Hong Kong lawyers to know your legal position.

The winning party may register the Mainland judgment in Hong Kong pursuant to the Ordinance. You may refer to the flowchart below and note your role as a potential “**respondent**” in the registration procedure.

The following serves as a summary of the application



- ▶ **The applicant** makes an application to the **Court of First Instance** of the High Court, supported by an **affidavit** or affirmation, exhibiting, among others, the following:
 - a sealed copy of the Mainland judgment and
 - a certificate issued by the Mainland court giving the judgment, certifying that such judgment concerns a civil or commercial matter that is effective in the Mainland.
- ▶ If the court is satisfied that the requirements for registration are met, it may make a **registration order** for the Mainland judgment or a part of it to be registered.
- ▶ **The applicant** serves a **notice of registration** on **all potential respondents** (i.e. all other parties against whom the Mainland judgment may be enforced). The notice of registration must set out, amongst others, the full particulars of the registration order, and the time limit for applying to set aside the registration.





procedures for registering a Mainland judgment in Hong Kong.

Stage 3

Setting aside application (if a respondent applies so)



- ▶ Within **14 days** after the notice of registration is served (unless other time limit is specified by the court), a **respondent** may apply to the court to set aside the registration.
- ▶ Examples of the **grounds for setting aside** include:
 - a requirement for registration, such as the judgment is effective in the Mainland, has not been complied with;
 - the defendant to the original proceedings for the Mainland judgment was not summoned to appear according to Mainland law;
 - the Mainland judgment was obtained by fraud; and
 - the jurisdictional requirement is not satisfied in respect of the original proceedings for the Mainland judgment.

Stage 4

Recognition and enforcement



- ▶ After the time limit for a setting aside application has expired or after any setting aside application, if made, has been finally dismissed, the Mainland judgment may be **registered**.
- ▶ For effect of registration, see answer to Q1 above.



Application for judgment copy and certificate for enforcement of Hong Kong judgments in civil or commercial matters in the Mainland

Q1: How do I know if a Hong Kong judgment is enforceable in the Mainland?

To facilitate recognition and enforcement of Hong Kong judgments in Mainland, the Ordinance provides for the application procedures of a certified copy of a Hong Kong judgment and a certificate may be obtained.

Not all Hong Kong judgments are covered by such procedure. The Ordinance provides for certain criteria for a Hong Kong judgment where it applies, which include:

► **Nature of proceedings in which the judgment was given:**

- civil proceedings, other than judicial reviews or any other proceedings arising directly out of the exercise of an administrative power; and
- criminal proceedings, and the judgment contains an order for the payment of a sum of money in respect of compensation or damages by a party to the proceedings.

► **Timing of judgment:** on or after **29 January 2024**

► **The judgment is effective in Hong Kong:** the judgment is enforceable in Hong Kong and was given by one of the following Hong Kong courts:

- the Court of Final Appeal
- the Court of Appeal
- the Court of First Instance
- the Competition Tribunal
- the District Court
- the Lands Tribunal
- the Labour Tribunal
- the Small Claims Tribunal

Further, certain Hong Kong judgments are **excluded**. Examples of such judgments are those given:

- in respect of **excluded matrimonial or family cases** (such as decrees absolute of divorce, maintenance orders, decrees of judicial separation, etc.);
(Recognition and enforcement of such Hong Kong judgments by Mainland courts may be obtained pursuant to the “Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases” signed in 2017 between the Supreme People’s Court and the HKSAR Government.)
- in respect of **excluded intellectual property cases** (such as tortious disputes over infringements of standard patents or short-term patents, etc.);
- in respect of matters relating to **insolvency or bankruptcy**; or
(Recognition of and assistance to Hong Kong liquidators may be obtained from certain Mainland courts pursuant to the “Record of Meeting on Mutual Recognition of and Assistance to Bankruptcy (Insolvency) Proceedings” signed in 2021 between the Supreme People’s Court and the HKSAR Government.)
- pursuant to **“choice of court agreements”** made before **29 January 2024**.
(The “Choice of Court Arrangement” signed between the Supreme People’s Court and the HKSAR Government in 1999 and the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) will continue to apply to these judgments.)

Q2: I want to enforce a Hong Kong judgment in the Mainland. What should I do?

The Arrangement and the judicial interpretation promulgated by the Supreme People's Court provides for the relevant procedures for enforcing a Hong Kong judgment in civil or commercial matters in the Mainland. As the procedures therein are a matter of Mainland law, you are encouraged to consult Mainland lawyers before initiating such procedures in the Mainland.

According to Article 8 of the Arrangement, in your application to the relevant Mainland court, you would have to submit a certified copy of Hong Kong judgment and a certificate.

The Ordinance provides for the application procedures of such judgment copy and such certificate in Hong Kong.

Q3: I want to apply for a certified judgment copy and a certificate for a Hong Kong judgment. What should I do?

The following serves as a summary of the application procedures of such certified copy and such certificate.



Stage

1

Application to the relevant court in Hong Kong

- ▶ Generally, the application should be made on **affidavit** to the registrar of the Hong Kong court which gave the judgment. The exceptions are:
 - For judgments given by the Competition Tribunal, the application should be made to the Registrar of the High Court.
 - For judgments given by the Lands Tribunal, Labour Tribunal or Small Claims Tribunal, the application should be made to the Registrar of the District Court.



Stage

2

Issue of certified copy of and certificate for the Hong Kong judgment by the Hong Kong court



Stage

3

Application to a Mainland court (if desired)

- ▶ The applicant makes the application to the Mainland court for recognition and enforcement of the Hong Kong judgment in the Mainland in accordance with Mainland law.

For more details, you are welcome to visit the following websites:



DoJ's thematic webpage



**Full text of the Ordinance on
"Hong Kong e-Legislation"**



**Full text of the Rules on
"Hong Kong e-Legislation"**



**Practice Direction issued by
the Judiciary**



**Courtesy English translation
of the Arrangement**



**Courtesy English translation
of the judicial interpretation**