

**For discussion on  
28 March 2022**

**Legislative Council Panel on  
Administration of Justice and Legal Services**

**Mainland Judgments in Civil and Commercial Matters  
(Reciprocal Enforcement) Bill and  
Mainland Judgments in Civil and Commercial Matters  
(Reciprocal Enforcement) Rules**

**I. PURPOSE**

This paper briefs Members on the key features of the proposed Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Bill (“**Bill**”) and Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Rules (“**Rules**”) and the outcome of the public consultation exercise conducted by the Government from December 2021 to January 2022 on the proposed Bill and Rules.

**II. BACKGROUND**

2. The Government consulted Members on the proposal for entering into an arrangement on reciprocal recognition and enforcement of judgments in civil and commercial matters between Hong Kong SAR and the Mainland in November 2017 and November 2018. Members, as well as other stakeholders including the Law Society of Hong Kong and the Hong Kong Bar Association, generally supported that proposal.

3. The Government and the Supreme People’s Court subsequently signed an arrangement titled “關於內地與香港特別行政區法院相互認可和執行民

商事案件判決的安排”<sup>1</sup> (“**REJ Arrangement**”) on 18 January 2019. The text of the REJ Arrangement is set out at **Annex A**. An information paper on the signed REJ Arrangement was issued to the Panel in January 2019.<sup>2</sup>

4. In formulating the REJ Arrangement, reference has been drawn to the then draft version of the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (“**Hague Judgments Convention**”) which was concluded on 2 July 2019 but still not yet in force. In the REJ Arrangement, taking into account the practical needs and circumstances of the Mainland and the Hong Kong SAR, and utilising the “one country two systems” policy, we have expanded its scope of application. The REJ Arrangement covers a wider range of judgments beyond contractual and tortious disputes as in the case under the Hague Judgments Convention, and expressly covers judgments given in respect of certain types of disputes over intellectual property rights.<sup>3</sup> This major breakthrough makes Hong Kong the first jurisdiction to have an arrangement with the Mainland on reciprocal recognition and enforcement of judgments with such a wide coverage, reflecting the unique advantages of “one country, two systems”.

5. The REJ Arrangement will come into effect after both Hong Kong and the Mainland have put in place the relevant implementation mechanism in their respective jurisdictions and will apply to judgments made on or after the commencement date of the REJ Arrangement. The Government understands that the REJ Arrangement will be implemented in the Mainland by way of judicial interpretation to be issued by the Supreme People’s Court. In Hong

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<sup>1</sup> The English translation of the title of the REJ Arrangement is “*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*”.

<sup>2</sup> LC Paper No. CB(4)433/18-19(01).

<sup>3</sup> Article 2.1(m) of the Hague Judgments Convention expressly excludes judgments on intellectual property. Separately, the scope of the REJ Arrangement also goes beyond that of 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 Pursuant to Choice of Court Agreements between Parties Concerned” (signed in July 2006 and its title in Chinese is “《關於內地與香港特別行政區法院相互認可和執行當事人協議管轄的民商事案件判決的安排》”) as well as 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” (signed in June 2017 and its title in Chinese is “《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》”).

Kong, the REJ Arrangement is to be implemented by way of the Bill and the Rules as proposed.

6. A public consultation on the draft Bill and the draft Rules (as set out in **Annex B**) commenced on 17 December 2021 and ended on 31 January 2022. The Government received 16 written submissions from stakeholders including those from the legal, intellectual property, business and dispute resolution sectors as well as regulatory bodies in Hong Kong. The Government also met with some stakeholders to brief them on the proposed legislative scheme and hear their views.

7. In Part III of this paper, we set out the key features of the draft Bill and the draft Rules, which *may be subject to revision* after further consideration of the respondents' comments. In Part IV, we summarise the main issues brought up in the respondents' submissions and set out our response to those comments. Unless otherwise specified, in this paper:

- (a) references to "Article" refer to the corresponding article in the REJ Arrangement;
- (b) references to "Clause" refer to the corresponding clause in the consultation draft of the Bill; and
- (c) references to "Rule" refer to the corresponding rule in the consultation draft of the Rules.

### **III. KEY FEATURES OF THE DRAFT BILL AND THE DRAFT RULES**

#### **A. *THE DRAFT BILL***

##### **(1) Overview**

8. The registration mechanism provided for under the draft Bill and the draft Rules is substantially similar to that provided for in the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639) ("**Cap. 639**"), which in turn is modelled upon that under the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) ("**Cap 597**") and the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319) ("**Cap. 319**").

9. In simple terms, under the proposed mechanism:

- (a) a person may apply to the Court of First Instance (“**CFI**”) to have a Mainland Judgment in a civil or commercial matter registered with the CFI on an *ex parte* basis;<sup>4</sup>
- (b) The CFI may set aside the registration if the applicant has proved to the satisfaction of the court that any of the exhaustive grounds of refusal exists;<sup>5</sup>
- (c) Subject to the discussions set out in paragraph 21(b) and (c) below, the proposed legislative scheme covers both monetary (excluding punitive or exemplary damages) and non-monetary relief; and
- (d) A registered judgment may be enforced in the same way as if it were a judgment originally given by the CFI.<sup>6</sup>

10. The proposed legislative scheme also facilitates the recognition and enforcement in the Mainland of Hong Kong Judgments in civil or commercial matters by empowering the Hong Kong court to issue certified copies of and certificates for such Hong Kong Judgments.

11. Except for certain “excluded intellectual property cases”<sup>7</sup>, the proposed legislative scheme covers “specified intellectual property rights” which is defined to mean the rights provided under Article 1(2) of the Agreement on Trade-Related Aspects of Intellectual Property Rights with an additional reference to plant variety rights provided under subparagraph (7) of the second paragraph of Article 123 of the Civil Code of the People’s Republic of China (中華人民共和國民法典)<sup>8</sup>.

12. Taking into account the principle of territoriality applicable to intellectual property rights, the Bill provides for:

- (a) the jurisdictional requirements specifically applicable to judgments given in respect of tortious disputes over the infringement of a

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<sup>4</sup> Clauses 10 – 19 and Rules 4 – 16.

<sup>5</sup> Clauses 20 – 22 and Rule 17.

<sup>6</sup> Clause 26.

<sup>7</sup> The term is defined in Clause 7 and reflects Article 3(1)(3). See also footnote 10(b) below.

<sup>8</sup> The definition is in Clause 2 and reflects Article 5.

“specified intellectual property right” or a civil dispute over an act of unfair competition under the relevant Mainland law (paragraph 23 below); and

- (b) the types of relief given in Mainland Judgments concerning “specified intellectual property rights” which are eligible for registration under the Bill (paragraph 21 below).

## (2) Scope of Application

13. Clause 3 provides for the scope of the judgments to which the new mechanism applies by defining what qualifies as a “Mainland Judgment in Civil or Commercial Matters”. It refers to a Mainland Judgment that is **not** an “excluded judgment” referred to in Clause 5; and either (a) it is given in proceedings that are civil or commercial in nature under the law of the Mainland; or (b) it is given in proceedings that are criminal in nature under the law of the Mainland, and contains an order for the payment of a sum of money in respect of compensation or damages by a party to the proceedings.<sup>9</sup>

14. The definition of “excluded judgment”<sup>10</sup> in Clause 5 reflects Article 3.

## (3) Registration Applications

15. Clause 10 provides that a judgment creditor under a Mainland Judgment in a civil or commercial matter may apply *ex parte* to the CFI for an order to register the Mainland Judgment, if:

- (a) the Judgment was given on or after the commencement date of the Ordinance<sup>11</sup>;

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<sup>9</sup> Clause 3(1)(a)(ii) seeks to reflect Article 1(2).

<sup>10</sup> By way of **non-exhaustive** examples, Mainland Judgments given in respect of any of the following matters would be **excluded**: (a) an excluded matrimonial or family case within the meaning of Clause 6; (b) an excluded intellectual property case within the meaning of Clause 7, i.e. a Mainland Judgment given in proceedings brought in respect of a tortious dispute over an infringement of an invention patent or utility model patent; and a Mainland Judgment given in proceedings for a determination of the licence fee rate of a standard-essential patent; (c) matters relating to marine pollution, limitation of liability for a maritime claim, general average, an emergency towage or salvage, a maritime lien, or the carriage of passengers by sea; (d) matters relating to the insolvency of an entity other than a natural person or the bankruptcy of a natural person; and (e) matters relating to the succession to, or the administration or distribution of, an estate.

<sup>11</sup> Clause 10(1)(a)(i) .

- (b) the Judgment is effective in the Mainland<sup>12</sup>; and
- (c) there was a default in complying with the Mainland Judgment's requirement to pay a sum of money or perform an act<sup>13</sup> and the default occurred within 2 years before the date of the application and has not been made good at the date of the application.<sup>14</sup>

16. Clause 12 provides for how the default date of a Mainland Judgment is to be ascertained. For example, if the Judgment does not specify a date by which a sum of money is to be paid, the default date is deemed to be the date on which the Judgment becomes effective in the Mainland.<sup>15</sup>

#### **(4) Registration Orders**

17. Clause 13 provides that on a registration application, the CFI may order a Mainland Judgment in a civil or commercial matter, or any part of such a Judgment, to be registered if the relevant conditions are satisfied.

##### *Certificate for a Mainland Judgment*

18. For the purpose of making a registration order, until the contrary is proved, a Mainland Judgment is presumed to be given in a civil or commercial matter and effective in the Mainland if a certificate certifying those facts is issued by the original Mainland court.<sup>16</sup>

##### *Sums to be included in registration and currency*

19. Clause 18 provides that the sums to be included on registration of a Mainland Judgment in a civil or commercial matter may include interest due under the Judgment, costs duly certified by the original Mainland court, etc.

20. Clause 19 states that where a sum of money is required to be paid under a Mainland Judgment is denominated in a currency other than Hong Kong dollars, the Judgment is registered as if the Judgment required the payment of

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<sup>12</sup> Clause 10(1)(a)(ii). See also Clause 8 which defines "Effective Mainland Judgments".

<sup>13</sup> Under Clause 2(2), the requirement to perform an act includes a prohibition, or a restriction, on the performance of an act.

<sup>14</sup> Clause 10(1)(b).

<sup>15</sup> Clause 12(b)(ii).

<sup>16</sup> Clause 13(2).

a sum denominated in Hong Kong dollars at the exchange rate prevailing at the date of registration.

*Mainland Judgments concerning “specified intellectual property rights”*

21. Clauses 15, 16 and 18(3)(c) contain the following provisions specifically applicable to Mainland Judgments concerning “specified intellectual property rights” as defined in Clause 2:

- (a) a ruling on the validity, establishment or subsistence of a “specified intellectual property right” must **not** be registered (Clause 15);
- (b) a Mainland Judgment given in respect of a tortious dispute over an infringement of a “specified intellectual property right” (**other than** an infringement of a right in a trade secret) or a civil dispute over an act of unfair competition under the relevant Mainland law must **not** be registered to the extent it relates to a relief **other than** monetary damages awarded in respect of an infringement or an act of unfair competition committed in the Mainland (Clause 16); and
- (c) punitive or exemplary damages would **not** be **excluded** if awarded in respect of (i) a tortious dispute over an infringement of a “specified intellectual property right” committed in the Mainland or; (ii) a civil dispute over an act of unfair competition committed in the Mainland (Clause 18(3)(c)).

**(5) Setting Aside Registration**

22. A person against whom a registered judgment may be enforced may, under Clause 21, apply to set aside the registration of the judgment within the time limit specified by the CFI.<sup>17</sup>

23. The grounds on which registration **must** be set aside are exhaustively set out under Clause 22(1). One of such grounds is where the jurisdictional requirement is **not** satisfied in the circumstances of the proceedings in which the Mainland Judgment was given.<sup>18</sup> The jurisdictional requirements are further spelt out in Clause 23. In particular, in light of the territoriality principle

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<sup>17</sup> Clause 21 seeks to reflect Article 12.

<sup>18</sup> Clause 22(1)(b) .

applicable to intellectual property rights, Clause 23(1)(a)(i) and (2) specifically provide for the jurisdictional requirements applicable only to judgments given in respect of tortious disputes over an infringement of a “specified intellectual property right” or a civil dispute over an act of unfair competition under the relevant Mainland law.

24. Clause 22(2) provides for a **discretionary** ground on which registration **may** be set aside, being that the proceedings in the original Mainland court were contrary to a valid arbitration agreement or jurisdiction agreement entered into by the same parties on the same cause of action.

#### **(6) Effect of Registration**

25. Clause 26 provides that a registered judgment may be enforced in Hong Kong as if it were a judgment originally given by the CFI on the day of registration.

26. Clause 27 provides that an action to enforce a registered judgment may be taken only after (a) the expiry of the period within which an application to set aside the registration of the judgment may be made, or (b) when an application to set aside has been made, the application has been finally disposed of.

#### **(7) Restrictions on Hong Kong Court Proceedings**

27. Under Clause 29, where a registration application is made in relation to a Mainland Judgment in a civil or commercial matter where proceedings are pending before a court in Hong Kong (“**adjudicating court**”) in respect of the same cause of action between the same parties, the pending proceedings before the adjudicating court must be stayed.

28. Where a registration application of a Mainland Judgment in a civil or commercial matter is pending or upon its registration, Clause 30 provides that a party to the proceedings in which the Mainland Judgment was given may not bring in a court in Hong Kong proceedings in respect of the same cause of action.



**(8) Facilitation of Recognition and Enforcement in the Mainland of Hong Kong Judgments in Civil or Commercial Matters**

29. To facilitate a party in seeking recognition and enforcement in the Mainland of a Hong Kong Judgment in a civil or commercial matter<sup>19</sup> given on or after the commencement date of the Ordinance and is effective in Hong Kong<sup>20</sup>, Clause 33 provides that a judgment creditor to a Hong Kong Judgment in a civil or commercial matter may apply to the relevant Hong Kong court or tribunal for a certified copy of the Hong Kong Judgment.

30. Clause 34 further states that when issuing a certified copy of the Hong Kong Judgment, the court or tribunal must also issue a certificate certifying that the Judgment is given in a civil or commercial matter and is effective in Hong Kong.

**(9) Relationship with the Choice of Court Arrangement<sup>21</sup>**

31. The Bill will **not** apply to the recognition and enforcement in Hong Kong of a Mainland Judgment given pursuant to a “choice of court agreement” made before the commencement date of the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance.<sup>22</sup> Cap. 597 will continue to apply to those Mainland Judgments.

***B. THE DRAFT RULES***

32. The key content of the draft Rules is outlined below.

33. Part 2 of the draft Rules sets out the rules concerning, among others,

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<sup>19</sup> “Hong Kong Judgment in a civil or commercial matter” is defined in Clause 4.

<sup>20</sup> “Effective Hong Kong Judgments” is defined in Clause 9.

<sup>21</sup> The Choice of Court Arrangement refers to “關於內地與香港特別行政區法院相互認可和執行當事人協議管轄的民商事案件判決的安排” and the title translated to English is “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 Pursuant to Choice of Court Agreements between Parties Concerned”. Such Arrangement was signed in July 2006 and took effect since 1 August 2008. Cap. 597 is the implementing legislation as far as the Hong Kong SAR is concerned.

<sup>22</sup> Clause 5(1)(j) and the Schedule to the Bill.

- (a) an application for registration of a Mainland Judgment in a civil or commercial matter, including the requirements concerning the supporting affirmation/affidavit;
- (b) an order for registration;
- (c) a notice of registration to be served by the applicant to other parties; and
- (d) an application to set aside the registration of a Mainland Judgment in a civil or commercial matter.

34. Part 3 deals with the execution of a registered judgment under the Bill. In particular, Rule 18 provides that the practice and procedure under the Rules of the High Court (Cap. 4A) (with necessary modifications) apply in relation to the proceedings for the execution of a registered judgment.

35. Part 4 sets out the rules concerning an application for a certified copy of a Hong Kong Judgment in a civil or commercial matter and the certificate referred to in paragraphs 29 and 30 above.

36. Part 5 provides for the relevant fees payable for a registration application and an application for a certified copy of a Hong Kong Judgment in a civil or commercial matter.

#### **IV. MAIN ISSUES RAISED BY RESPONDENTS**

##### **(1) General Comments**

37. On the whole, most respondents indicated their support for the implementation of the REJ Arrangement through the draft Bill and the draft Rules and some remarked that given the growing ties between Hong Kong and the Mainland, the implementation of the REJ Arrangement could reduce the need for re-litigation of the same disputes in both places and offer better protection to parties' interests. Further, the majority of the respondents agreed

that the enactment of the Bill and the Rules could enhance Hong Kong's competitiveness as a regional centre for legal and dispute resolution services.

## **(2) Scope of Application**

38. Some respondents specifically welcomed the wide scope of application of the REJ Bill which covers judgments on a wide range of contractual and tortious disputes including certain intellectual property disputes. Such comments are summarised below:

- (a) A respondent indicated that the implementation of the REJ Arrangement would provide a better environment and basis for the legal profession in Hong Kong to contribute to fuller and harmonious integration in the Greater Bay Area.
- (b) Another respondent specifically welcomed the proposed legislative scheme's inclusion of judgments given in respect of disputes over certain intellectual property rights, expressing that such inclusion would support the Greater Bay Area's innovation-driven development.
- (c) Another respondent expressed that the unique advantage of Hong Kong under the REJ Arrangement in enforcing Mainland judgments concerning intellectual property dispute (and vice versa) would complement Hong Kong's development into a regional intellectual property trading centre as supported in the National 14<sup>th</sup> Five-Year Plan.

## **(3) Finality of Mainland Judgments and Trial Supervision Procedure under Mainland Law**

39. Some respondents commented that given the operation of the trial supervision procedure under Mainland law, questions may arise on the finality of Mainland judgments.

40. The Government understands that according to the trial supervision procedure provided for under Mainland law, it would be possible for a party to apply for a review of a legally effective Mainland judgment (through a retrial

of the case) subject to the satisfaction of certain conditions set out in Article 207 of the *Civil Procedure Law of the People's Republic of China* (《中華人民共和國民事訴訟法》).

41. The Bill provides for the enforcement in Hong Kong of **effective** Mainland judgments.<sup>23</sup> Specifically, the Bill seeks to address this issue as follows:

- (a) Clause 8(1) defines “Effective Mainland Judgments” to mean a Mainland Judgment which is **enforceable** in the Mainland **and if**:
  - (i) it is a Mainland Judgment given by the Supreme People's Court;
  - (ii) it is a Mainland Judgment of the second instance given by a High People's Court or an Intermediate People's Court; or
  - (iii) it is a Mainland Judgment of the first instance given by a High People's Court, an Intermediate People's Court or a Primary People's Court, and no appeal is allowed from the judgment according to Mainland law or the time limit for appeal in respect of the judgment has expired according to Mainland law and no appeal has been filed.
- (b) Clause 8(2) provides that Mainland Judgments mentioned in items (i), (ii) and (iii) above includes a Mainland Judgment given according to the trial supervision procedure of the Mainland.
- (c) Clause 13(2) states that **until the contrary is proved**, a Mainland judgment will be **presumed** to be given in a civil or commercial matter and **effective** in the Mainland **if a certificate** certifying those facts is **issued by the original Mainland court**.
- (d) Clause 24 states that if the court is satisfied that an appeal against the judgment is pending or the case on which the judgment was

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<sup>23</sup> It is likewise provided in Article 4 that “legally effective” Hong Kong judgments would be eligible for recognition and enforcement in the Mainland and that does *not* exclude judgments pending appeal. It is however provided in Article 20 that if a party has lodged an appeal on a Hong Kong judgment, the Mainland court may suspend the recognition and enforcement proceedings. Upon the conclusion of the appeal, the recognition and enforcement proceedings shall be resumed if the original Hong Kong judgment is upheld in whole or in part, or terminated if the said judgment is reversed.

based is ordered to be retried, upon an application to set aside the registration of the registered Mainland judgment, the court may adjourn the setting aside application until after the expiry of the period that appears to the court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal or retrial disposed of.

42. The Government takes the view that whether a Mainland judgment is effective under the Mainland law is a **question of fact** in respect of which the applicant for registration bears the burden of proof. Clause 13(2) provides a rebuttable evidentiary presumption.

43. The Government considers that the formulation outlined in paragraph 41 above reflects a pragmatic approach, having taken into account the fact that under Mainland law, a judgment given by the Mainland court would not be regarded as effective if the time limit for appeal in respect of the judgment has not expired and hence not enforceable under Mainland law<sup>24</sup>. In other words, a party to the judgment could only obtain a certificate from the Mainland court certifying that the judgment has become effective after the period for lodging an appeal has expired under Mainland law. The current formulation in the Bill would be consistent with the approach under common law and also the same as under Cap. 639<sup>25</sup>.

44. The Government further notes that the issue on the finality of non-Hong Kong judgments may be relevant when a party seeks to enforce such a judgment in Hong Kong at common law and further, the issue of whether the proceedings for seeking enforcement in Hong Kong of a non-Hong Kong judgment would be capable of giving rise to a judgment which may be enforced in Hong Kong may also arise under section 21M of the High Court Ordinance (Cap. 4)<sup>26</sup>. In these circumstances and as far as Mainland judgments are concerned, it appears that under the relevant case law, an application *per se* to the Mainland court for a retrial of the case under which the Mainland judgment was made or the mere existence of the trial supervision procedure under the Mainland law would not

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<sup>24</sup> Articles 158 and 231 of the *Civil Procedure Law of the People's Republic of China* (《中華人民共和國民事訴訟法》)

<sup>25</sup> Section 5 of Cap. 639.

<sup>26</sup> Section 21M of Cap. 4 provides for applications for interim relief in the absence of substantive proceedings in Hong Kong.

render the Mainland judgment not final or not capable of being enforced in Hong Kong<sup>27</sup>.

45. In addition, Clause 22(1)(k) provides that the court must set aside the registration of a registered Mainland judgment if it has been reversed or otherwise set aside pursuant to an appeal or a retrial. We take the view that the formulation set out paragraph 41 above, together with Clause 22(1)(k) would provide sufficient safeguards to the parties on the finality issue.

#### **(4) Time Limit For Making Setting Aside Applications**

46. Some respondents suggested that for clarity and certainty, the time limit for making setting aside applications should be expressly set out in the Bill.

47. Currently, in relation to the time limit for making setting aside applications, the draft Bill and the draft Rules provide the following:

- (a) Clause 20(1) provides that the court must, when making a registration order, specify the period within which an application for setting aside the registration may be made. Clause 20(2) further provides the court with a discretion to extend the time limit.
- (b) Rule 16 provides that if a registration order is made, the applicant must serve a notice of registration to all other parties to the original proceedings for the Mainland Judgment<sup>28</sup> and the notice must set out the period within which a setting aside application may be made.<sup>29</sup>

48. The Government takes the view that the draft Bill and the draft Rules have struck a balance between the desirability of providing flexibility to the

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<sup>27</sup> In *Bank of China Ltd. v Yang Fan* [2016] 3 HKLRD 7 at paras. 38 - 54, Anthony To J considered in the context of whether to continue a Mareva injunction to restrain the defendant from disposing of his assets in Hong Kong, the question of whether the Mainland judgment obtained by the plaintiff would be capable of being enforced in Hong Kong arose. This turned on the issue of whether the protest regime by the People's Procuratorate under the trial supervision procedure in the Mainland would render Mainland judgments not being final and conclusive. The court remarked at para. 54 that "[i]n any event, the Court of Appeal has never held that PRC judgments are not final and conclusive by reason only of the protest regime."

<sup>28</sup> Rule 16(1).

<sup>29</sup> Rule 16(3)(d).

court in fixing a time limit as the court deems fit on a case-by-case basis on the one hand and the need to provide certainty to the parties on the other.

49. Furthermore, the formulation set out in paragraph 47 above is substantially similar to that provided for under Cap. 597<sup>30</sup> and Cap. 639<sup>31</sup> and as far as Cap. 597 is concerned, we note that such formulation does not seem to have caused any difficulties on the operation of that Ordinance.

## **(5) Interim Relief**

50. Some respondents suggested to include in the draft Bill specific provisions to provide for interim relief so as to restrain a party against whom a registered judgment might be enforced from removing properties out of or dealing with properties within Hong Kong.

51. With the enactment of the Bill and the Rules, the current legislative regime for applications for interim relief in relation to proceedings commenced or to be commenced in Hong Kong provided under the High Court Ordinance (Cap. 4) would apply when a Mainland Judgment is to be/has been registered.<sup>32</sup> The Government considers that it would be unnecessary to prescribe another set of provisions on applications for interim relief in respect of the proposed legislative scheme.

## **(6) Execution of Registered Judgments**

52. A respondent expressed that when enforcing Mainland judgments in Hong Kong, parties would encounter difficulties especially when the judgment debtor is out of jurisdiction and service of court documents out of jurisdiction would be required.

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<sup>30</sup> Section 17 of Cap. 597.

<sup>31</sup> Sections 14 and 31 of Cap. 639.

<sup>32</sup> An application for a Mareva injunction under section 21M of the High Court Ordinance was made by the plaintiff of a Mainland judgment registered under Cap. 597 in *Export-Import Bank of China v Taifeng Textile Group Co Ltd* [2018] HKCFI 1840. Lisa Wong J considered the applicability of sections 21M and 21N of the High Court Ordinance at paras. 111 to 115 of that judgment and held that those sections did not preclude an application after judgment in the foreign proceedings but before substantive proceedings have been commenced in Hong Kong for the recognition and enforcement of the judgment.

53. In this connection, Rule 16(2) provides that when a registration order is made for a Mainland Judgment and the applicant is required to serve a notice of registration on all other parties to the original proceedings in the Mainland, service of the notice of registration out of the jurisdiction of Hong Kong is permissible without leave of the court.

54. As far as subsequent execution proceedings is concerned, Part 3 of the Rules provides for the practice and procedure applicable to the execution of registered judgments. Specifically, Rule 19 provides for the matters required to be stated in an affidavit (or affirmation) in support of the issue of execution on a registered Mainland judgement and Rule 18 provides that the practice and procedure under the Rules of the High Court apply, with necessary modifications, in relation to proceedings for the execution of a registered judgment.

55. The relevant Rules as described in paragraphs 53 to 54 above have been similarly adopted under Cap. 597<sup>33</sup> and Cap. 319<sup>34</sup> which have been operating well. The Government takes the view that it would not be necessary to prescribe a separate set of rules providing for the execution of Mainland judgments registered under the Bill, whether the judgment debtor is out of jurisdiction or otherwise.

## **(7) Appeal Mechanism**

56. A respondent suggested that the Bill should include references to provisions on the applicable appeal procedures.

57. With the enactment of the Bill and the Rules, the existing legislative provisions on appeal procedures under the High Court Ordinance would continue to apply as in the case of Cap. 639, Cap. 597 and Cap. 319 and such established procedures would have been familiar to the legal practitioners and relevant stakeholders. The Government considers that it would be unnecessary to make separate provisions in the Bill or the Rules on the applicable appeal procedures.

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<sup>33</sup> Order 71A rule 9 of the Rules of High Court.

<sup>34</sup> Order 71 rule 10 of the Rules of High Court.



## **(8) Drafting Style**

58. A respondent commented that the drafting style and format of the Bill was apparently different from that adopted in Cap. 597 and Cap. 319 and as such would not be most user-friendly as practitioners would have been familiar with the format of Cap. 597 and Cap. 319.

59. Indeed, the Bill have been modelled on Cap. 597 and Cap. 319 as well as Cap. 639, being the latest legislation on reciprocal enforcement of judgments with the Mainland in respect of matrimonial and family related judgments. On the basis of the skeleton underpinned by these existing ordinances, the Government has adopted a more modern approach in drafting the Bill with the aim of making the provisions more reader-friendly and with enhanced clarity. We take the view that the current drafting style and format of the Bill would be effective to achieve the Bill's objectives.

## **(9) Rules**

60. A respondent doubted the need for a separate set of rules (as currently proposed) providing for the various types of applications to be made under the Bill and commented that it would be more user-friendly if such rules could be made under the Rules of the High Court.

61. The Government notes that in relation to the rules and practice concerning applications to be made under Cap. 597, Orders 71A and 71B were made under the Rules of the High Court whilst in relation to Cap. 639, a separate set of rules, namely, the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Rules (Cap. 639A) was enacted.

62. Having considered the circumstances relating to the implementation of Cap. 597 and the REJ Arrangement as well as the comments from stakeholders including those relating to Cap. 639 insofar as they would be relevant to the present context, the Government considers that a set of tailor-made provisions as proposed under the draft Rules would be conducive to the operation of the Bill. The Rules, in its present form and layout (as outlined in paragraphs 32 to 36 above), would facilitate parties to prepare their relevant applications to be

made to the court with clear guidelines on the details required for the supporting affidavits (or affirmations) and would in turn assist the court to handle those applications in an effective and efficient manner.

## **V. WAY FORWARD**

63. Subject to Members' comments, the Government plans to introduce the Bill into the Legislative Council in the second quarter of 2022.

## **VI. ADVICE SOUGHT**

64. Members are invited to note and comment on the draft Bill and the draft Rules.

**Department of Justice**  
**March 2022**

## 關於內地與香港特別行政區法院 相互認可和執行民商事案件判決的安排

根據《中華人民共和國香港特別行政區基本法》第九十五條的規定，最高人民法院與香港特別行政區政府經協商，現就民商事案件判決的相互認可和執行問題作出如下安排：

**第一條** 內地與香港特別行政區法院民商事案件生效判決的相互認可和執行，適用本安排。

刑事案件中有關民事賠償的生效判決的相互認可和執行，亦適用本安排。

**第二條** 本安排所稱“民商事案件”是指依據內地和香港特別行政區法律均屬於民商事性質的案件，不包括香港特別行政區法院審理的司法覆核案件以及其他因行使行政權力直接引發的案件。

**第三條** 本安排暫不適用於就下列民商事案件作出的判決：

（一）內地人民法院審理的贍養、兄弟姐妹之間扶養、解除收養關係、成年人監護權、離婚後損害責任、同居關係析產案件，香港特別行政區法院審理的應否裁判分居的案件；

（二）繼承案件、遺產管理或者分配的案件；

(三) 內地人民法院審理的有關發明專利、實用新型專利侵權的案件，香港特別行政區法院審理的有關標準專利（包括原授專利）、短期專利侵權的案件，內地與香港特別行政區法院審理的有關確認標準必要專利許可費率的案件，以及有關本安排第五條未規定的知識產權案件；

(四) 海洋環境污染、海事索賠責任限制、共同海損、緊急拖航和救助、船舶優先權、海上旅客運輸案件；

(五) 破產（清盤）案件；

(六) 確定選民資格、宣告自然人失蹤或者死亡、認定自然人限制或者無民事行為能力的案件；

(七) 確認仲裁協議效力、撤銷仲裁裁決案件；

(八) 認可和執行其他國家和地區判決、仲裁裁決的案件。

**第四條** 本安排所稱“判決”，在內地包括判決、裁定、調解書、支付令，不包括保全裁定；在香港特別行政區包括判決、命令、判令、訟費評定證明書，不包括禁訴令、臨時濟助命令。

本安排所稱“生效判決”：

(一) 在內地，是指第二審判決，依法不准上訴或者超過法定期限沒有上訴的第一審判決，以及依照審判監督程序作出的上述判決；

(二) 在香港特別行政區，是指終審法院、高等法院

上訴法庭及原訟法庭、區域法院以及勞資審裁處、土地審裁處、小額錢債審裁處、競爭事務審裁處作出的已經發生法律效力的判決。

**第五條** 本安排所稱“知識產權”是指《與貿易有關的知識產權協定》第一條第二款規定的知識產權，以及《中華人民共和國民法總則》第一百二十三條第二款第七項、香港《植物品種保護條例》規定的權利人就植物新品種享有的知識產權。

**第六條** 本安排所稱“住所地”，當事人為自然人的，是指戶籍所在地或者永久性居民身份所在地、經常居住地；當事人為法人或者其他組織的，是指註冊地或者登記地、主要辦事機構所在地、主要營業地、主要管理地。

**第七條** 申請認可和執行本安排規定的判決：

（一）在內地，向申請人住所地或者被申請人住所地、財產所在地的中級人民法院提出；

（二）在香港特別行政區，向高等法院提出。

申請人應當向符合前款第一項規定的其中一個人民法院提出申請。向兩個以上有管轄權的人民法院提出申請的，由最先立案的人民法院管轄。

**第八條** 申請認可和執行本安排規定的判決，應當提交下列材料：

（一）申請書；

（二）經作出生效判決的法院蓋章的判決副本；

（三）作出生效判決的法院出具的證明書，證明該判決屬於生效判決，判決有執行內容的，還應當證明在原審法院地可以執行；

（四）判決為缺席判決的，應當提交已經合法傳喚當事人的證明文件，但判決已經對此予以明確說明或者缺席方提出認可和執行申請的除外；

（五）身份證明材料：

1. 申請人為自然人的，應當提交身份證件複印件；

2. 申請人為法人或者其他組織的，應當提交註冊登記證書的複印件以及法定代表人或者主要負責人的身份證件複印件。

上述身份證明材料，在被請求方境外形成的，應當依據被請求方法律規定辦理證明手續。

向內地人民法院提交的文件沒有中文文本的，應當提交準確的中文譯本。

**第九條** 申請書應當載明下列事項：

（一）當事人的基本情況：當事人為自然人的，包括姓名、住所、身份證件信息、通訊方式等；當事人為法人或者其他組織的，包括名稱、住所及其法定代表人或者主要負責人的姓名、職務、住所、身份證件信息、通訊方式等；

(二) 請求事項和理由；申請執行的，還需提供被申請人的財產狀況和財產所在地；

(三) 判決是否已在其他法院申請執行以及執行情況。

**第十條** 申請認可和執行判決的期間、程序和方式，應當依據被請求方法律的規定。

**第十一條** 符合下列情形之一，且依據被請求方法律有關訴訟不屬於被請求方法院專屬管轄的，被請求方法院應當認定原審法院具有管轄權：

(一) 原審法院受理案件時，被告住所地在該方境內；

(二) 原審法院受理案件時，被告在該方境內設有代表機構、分支機構、辦事處、營業所等不屬於獨立法人的機構，且訴訟請求是基於該機構的活動；

(三) 因合同糾紛提起的訴訟，合同履行地在該方境內；

(四) 因侵權行為提起的訴訟，侵權行為實施地在該方境內；

(五) 合同糾紛或者其他財產權益糾紛的當事人以書面形式約定由原審法院地管轄，但各方當事人住所地均在被請求方境內的，原審法院地應系合同履行地、合同簽訂地、標的物所在地等與爭議有實際聯繫地；

(六) 當事人未對原審法院提出管轄權異議並應訴答

辯，但各方當事人住所地均在被請求方境內的，原審法院地應系合同履行地、合同簽訂地、標的物所在地等與爭議有實際聯繫地。

前款所稱“書面形式”是指合同書、信件和數據電文（包括電報、電傳、傳真、電子數據交換和電子郵件）等可以有形地表現所載內容的形式。

知識產權侵權糾紛案件以及內地人民法院審理的《中華人民共和國反不正當競爭法》第六條規定的不正當競爭糾紛民事案件、香港特別行政區法院審理的假冒糾紛案件，侵權、不正當競爭、假冒行為實施地在原審法院地境內，且涉案知識產權權利、權益在該方境內依法應予保護的，才應當認定原審法院具有管轄權。

除第一款、第三款規定外，被請求方法院認為原審法院對於有關訴訟的管轄符合被請求方法律規定的，可以認定原審法院具有管轄權。

**第十二條** 申請認可和執行的判決，被申請人提供證據證明有下列情形之一的，被請求方法院審查核實後，應當不予認可和執行：

（一）原審法院對有關訴訟的管轄不符合本安排第十一條規定的；

（二）依據原審法院地法律，被申請人未經合法傳喚，或者雖經合法傳喚但未獲得合理的陳述、辯論機會的；



(三) 判決是以欺詐方法取得的；

(四) 被請求方法院受理相關訴訟後，原審法院又受理就同一爭議提起的訴訟並作出判決的；

(五) 被請求方法院已經就同一爭議作出判決，或者已經認可其他國家和地區就同一爭議作出的判決的；

(六) 被請求方已經就同一爭議作出仲裁裁決，或者已經認可其他國家和地區就同一爭議作出的仲裁裁決的。

內地人民法院認為認可和執行香港特別行政區法院判決明顯違反內地法律的基本原則或者社會公共利益，香港特別行政區法院認為認可和執行內地人民法院判決明顯違反香港特別行政區法律的基本原則或者公共政策的，應當不予認可和執行。

**第十三條** 申請認可和執行的判決，被申請人提供證據證明在原審法院進行的訴訟違反了當事人就同一爭議訂立的有效仲裁協議或者管轄協議的，被請求方法院審查核實後，可以不予認可和執行。

**第十四條** 被請求方法院不能僅因判決的先決問題不屬於本安排適用範圍，而拒絕認可和執行該判決。

**第十五條** 對於原審法院就知識產權有效性、是否成立或者存在作出的判項，不予認可和執行，但基於該判項作出的有關責任承擔的判項符合本安排規定的，應當認可和執行。

**第十六條** 相互認可和執行的判決內容包括金錢判項、非金錢判項。

判決包括懲罰性賠償的，不予認可和執行懲罰性賠償部份，但本安排第十七條規定的除外。

**第十七條** 知識產權侵權糾紛案件以及內地人民法院審理的《中華人民共和國反不正當競爭法》第六條規定的不正當競爭糾紛民事案件、香港特別行政區法院審理的假冒糾紛案件，內地與香港特別行政區法院相互認可和執行判決的，限於根據原審法院地發生的侵權行為所確定的金錢判項，包括懲罰性賠償部份。

有關商業秘密侵權糾紛案件判決的相互認可和執行，包括金錢判項（含懲罰性賠償）、非金錢判項。

**第十八條** 內地與香港特別行政區法院相互認可和執行的財產給付範圍，包括判決確定的給付財產和相應的利息、訴訟費、遲延履行金、遲延履行利息，不包括稅收、罰款。

前款所稱“訴訟費”，在香港特別行政區是指訟費評定證明書核定或者命令支付的費用。

**第十九條** 被請求方法院不能認可和執行判決全部判項的，可以認可和執行其中的部份判項。

**第二十條** 對於香港特別行政區法院作出的判決，一方當事人已經提出上訴，內地人民法院審查核實後，中止

認可和執执行程序。經上訴，維持全部或者部份原判決的，恢復認可和執执行程序；完全改變原判決的，終止認可和執执行程序。

內地人民法院就已經作出的判決裁定再審的，香港特別行政區法院審查核實後，中止認可和執执行程序。經再審，維持全部或者部份原判決的，恢復認可和執执行程序；完全改變原判決的，終止認可和執执行程序。

**第二十一條** 被申請人在內地和香港特別行政區均有可供執行財產的，申請人可以分別向兩地法院申請執行。

應對方法院要求，兩地法院應當相互提供本方執行判決的情況。

兩地法院執行財產的總額不得超過判決確定的數額。

**第二十二條** 在審理民商事案件期間，當事人申請認可和執行另一地法院就同一爭議作出的判決的，應當受理。受理後，有關訴訟應當中止，待就認可和執行的申請作出裁定或者命令後，再視情終止或者恢復訴訟。

**第二十三條** 審查認可和執行判決申請期間，當事人就同一爭議提起訴訟的，不予受理；已經受理的，駁回起訴。

判決全部獲得認可和執行後，當事人又就同一爭議提起訴訟的，不予受理。

判決未獲得或者未全部獲得認可和執行的，申請人不得再次申請認可和執行，但可以就同一爭議向被請求方法院提起訴訟。

**第二十四條** 申請認可和執行判決的，被請求方法院在受理申請之前或者之後，可以依據被請求方法律規定採取保全或者強制措施。

**第二十五條** 法院應當盡快審查認可和執行的申請，並作出裁定或者命令。

**第二十六條** 被請求方法院就認可和執行的申請作出裁定或者命令後，當事人不服的，在內地可以於裁定送達之日起十日內向上一級人民法院申請覆議，在香港特別行政區可以依據其法律規定提出上訴。

**第二十七條** 申請認可和執行判決的，應當依據被請求方有關訴訟收費的法律和規定交納費用。

**第二十八條** 本安排簽署後，最高人民法院和香港特別行政區政府經協商，可以就第三條所列案件判決的認可和執行以及第四條所涉保全、臨時濟助的協助問題簽署補充文件。

本安排在執行過程中遇有問題或者需要修改的，由最高人民法院和香港特別行政區政府協商解決。

**第二十九條** 本安排在最高人民法院發布司法解釋和

香港特別行政區完成有關程序後，由雙方公布生效日期。

內地與香港特別行政區法院自本安排生效之日起作出的判決，適用本安排。

**第三十條** 本安排生效之日，《關於內地與香港特別行政區法院相互認可和執行當事人協議管轄的民商事案件判決的安排》同時廢止。

本安排生效前，當事人已簽署《關於內地與香港特別行政區法院相互認可和執行當事人協議管轄的民商事案件判決的安排》所稱“書面管轄協議”的，仍適用該安排。

**第三十一條** 本安排生效後，《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》繼續施行。

本安排於二零一九年一月十八日在北京簽署，一式兩份。

(Courtesy English Translation)

**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**

In accordance with the provisions of Article 95 of the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, the Supreme People's Court and the Government of the Hong Kong Special Administrative Region (HKSAR), after consultation, hereby make the following arrangement on reciprocal recognition and enforcement of judgments in civil and commercial matters:

**Article 1**

This Arrangement applies to the reciprocal recognition and enforcement of legally effective judgments in civil and commercial matters between the courts of the Mainland and of the HKSAR.

This Arrangement also applies to the reciprocal recognition and enforcement of legally effective judgments in relation to civil damages awarded in criminal cases.

**Article 2**

“Civil and commercial matter” referred to in this Arrangement means a matter which is considered to be civil and commercial in nature under both Mainland law and Hong Kong law. It does not include judicial review cases and any other cases heard by the courts of the HKSAR arising directly out of the exercise of administrative powers.

**Article 3**

This Arrangement, for the time being, does not apply to judgments in the following civil and commercial matters:

(1) cases heard by a people's court of the Mainland on maintenance of parent(s) or grandparent(s), maintenance between siblings, dissolution of adoptive relationship,

guardianship of adults, disputes after divorce on liability for damages, or division of property arising from a co-habitation relationship; or cases heard by a court of the HKSAR on whether a decree of judicial separation should be granted;

(2) cases on succession, administration or distribution of estate;

(3) cases on the tortious infringement of invention patents and utility model patents heard by a people's court of the Mainland; cases on the tortious infringement of standard patents (including "original grant" patents) and short-term patents heard by a court of the HKSAR; cases on the confirmation of the licence fee rate of a standard-essential patent heard by a court of the Mainland or a court of the HKSAR; and cases concerning intellectual property rights not covered under Article 5 of this Arrangement;

(4) cases on marine pollution, limitation of liability for maritime claims, general average, emergency towage and salvage, maritime liens, and carriage of passengers by sea;

(5) bankruptcy (insolvency) cases;

(6) cases on the determination of a natural person's qualification as a voter, declaration of disappearance or death of a natural person, or the determination of limited or lack of legal capacity of a natural person for civil acts;

(7) cases on the confirmation of the validity of an arbitration agreement or the setting aside of an arbitral award;

(8) cases on the recognition and enforcement of judgments or arbitral awards of other countries or regions.

#### **Article 4**

A "judgment" referred to in this Arrangement includes, in the case of the Mainland, any judgment, ruling, conciliatory statement and order of payment, but does not include a ruling concerning preservation measures; in the case of the HKSAR, includes any judgment, order, decree and allocator, but does not include an anti-suit injunction or an order for interim relief.

A “legally effective judgment” referred to in this Arrangement:

(1) in the case of the Mainland, means a judgment of the second instance, 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, as well as the above types of judgments given in accordance with the trial supervision procedure;

(2) in the case of the HKSAR, means a legally effective judgment given by the Court of Final Appeal, the Court of Appeal and the Court of First Instance of the High Court, the District Court, the Labour Tribunal, the Lands Tribunal, the Small Claims Tribunal or the Competition Tribunal.

#### **Article 5**

“Intellectual property right” referred to in this Arrangement means an “intellectual property” as stipulated in Article 1(2) of the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, as well as an intellectual property right enjoyed by an owner in respect of new plant varieties as stipulated in Article 123(2)(7) of the *General Provisions of the Civil Law of the People’s Republic of China* and the *Plant Varieties Protection Ordinance* of Hong Kong.

#### **Article 6**

“Place of residence” referred to in this Arrangement means, in the case of a natural person, his/her place of household registration, place of permanent residence or place of habitual residence; and in the case of a legal person or other organisation, its place of incorporation or registration, place of principal office, principal place of business or principal place of management.

#### **Article 7**

An application for recognition and enforcement of a judgment stipulated in this Arrangement:



(1) in the case of the Mainland, should be filed with an Intermediate People's Court of the place of residence of the applicant or the respondent, or the place where the property of the respondent is located;

(2) in the case of the HKSAR, should be filed with the High Court.

An applicant shall apply to a people's court of the Mainland which meets the requirement in sub-paragraph (1) of the preceding paragraph. If an application is made to two or more people's courts having jurisdiction, the people's court which accepts the case first shall exercise jurisdiction.

### **Article 8**

An applicant applying for recognition and enforcement of a judgment stipulated in this Arrangement shall submit the following documents:

(1) an application;

(2) a copy of the legally effective judgment affixed with the seal of the court which gave the judgment;

(3) a certificate issued by the court which gave the legally effective judgment certifying the judgment to be a legally effective judgment and, if the judgment has content which requires enforcement, certifying the judgment to be enforceable in the requesting place;

(4) where the judgment is a default judgment, a document certifying that the party concerned has been legally summoned, unless the judgment expressly states the same, or the absent party is the party applying for recognition and enforcement;

(5) documents of identity :

1. where the applicant is a natural person, a copy of the identity card shall be submitted;

2. where the applicant is a legal person or other organisation, copies of the certificate of incorporation or registration and of the identity card of the legal representative or the principal responsible person shall be submitted;

The above identity documents, if issued in a place outside the requested place, shall be certified in accordance with the law of the requested place.

Where a document submitted to a people's court of the Mainland is not in the Chinese language, the applicant shall submit an accurate Chinese translation.

### **Article 9**

An application shall specify the following:

(1) particulars of the parties: where the party is a natural person, his/her name, address, particulars of identity documents, means of contact, etc.; where the party is a legal person or other organisation, its name, address as well as the name, position, address, particulars of identity documents, means of contact, etc. of its legal representative or principal responsible person;

(2) details of the request and justifications for the application, and in the case of an application for enforcement, also the status and location of the property of the respondent;

(3) whether an application has been made for the enforcement of the judgment in any other court, and the status of its enforcement.

### **Article 10**

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

### **Article 11**

The court of the requested place shall consider the original court to have jurisdiction over the relevant action if one of the following conditions is satisfied and if, according to the law of the requested place, the courts of the requested place do not have exclusive jurisdiction over the action:

(1) at the time the original court accepted the case, the place of residence of the defendant is within the requesting place;

(2) at the time the original court accepted the case, the defendant maintained in that place a representative office, branch, office, place of business or such other establishment without separate legal personality, and the action arose out of the activities of that establishment;

(3) the action was brought on a contractual dispute and the place of performance of the contract is in the requesting place;

(4) the action was brought on a tortious dispute and the infringing act was committed in the requesting place;

(5) the parties to a contractual dispute or other dispute concerning interests in property had expressly agreed in writing that the courts of the requesting place shall have jurisdiction over the relevant proceeding, but where the place of residence of all the parties to the judgment was in the requested place, the requesting place should be the place where the contract was performed or signed, or where the subject matter was situated etc., being a place which has an actual connection with the dispute;

(6) the parties did not raise objection to the jurisdiction of the original court and appeared before and defended in the proceedings, but where the place of residence of all the parties to the judgment was in the requested place, the requesting place should be the place where the contract was performed or signed, or where the subject matter was situated etc., being a place which has an actual connection with the dispute.

“In written form” referred to in preceding paragraph means a form in which the contents may be displayed in a visible form, such as a written contract, a letter or an electronic data message (including a telegram, a telex, a facsimile, an electronic data interchange or an e-mail).

For tortious claims for infringement of an intellectual property right, civil disputes over acts of unfair competition under Article 6 of the *Anti-Unfair Competition Law of the People's Republic of China* heard by a people's court of the Mainland, and disputes over passing off heard by a court of the HKSAR, the original court shall be considered to have jurisdiction only if the act of infringement, unfair competition or passing off was committed in the requesting place, and the intellectual property right or interest concerned is subject to protection under the law of the requesting place.

Apart from as stipulated under the first and third paragraphs above, the original court may be considered to have jurisdiction if the requested court considers that the exercise of jurisdiction over the relevant action by the original court is consistent with the law of the requested place.

## **Article 12**

With respect to an application for recognition and enforcement of a judgment, a court of the requested place 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:

(1) the exercise of jurisdiction by the original court over the action does not meet the requirements stipulated in Article 11 of this Arrangement;

(2) the respondent was not legally summoned in accordance with the law of the place of the original court; or although the respondent was legally summoned, the respondent was not given a reasonable opportunity to make representations or defend the respondent's case;

(3) the judgment was obtained by fraud;

(4) the judgment was rendered in an action which was accepted by the original court after a court of the requested place has already accepted an action on the same dispute;

(5) a court of the requested place has rendered a judgment on the same dispute, or has recognised a judgment on the same dispute given by another country or place;

(6) the requested place has made an arbitral award on the same dispute or has recognised an arbitral award on the same dispute made in another country or place.

Where a people's court of the Mainland considers that the recognition and enforcement of a judgment given by a court of the HKSAR 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 court of the HKSAR considers that the recognition and enforcement of a judgment given by a people's court of the Mainland is manifestly contrary to the basic principles of the law of the HKSAR or the public policy of the HKSAR, the judgment shall not be recognised or enforced.

### **Article 13**

With respect to an application for recognition and enforcement of a judgment, the court may refuse to recognise and enforce a judgment if, upon examination of the evidence adduced by the respondent, the requested court is satisfied that the action in the original court was contrary to a valid arbitration agreement or a valid jurisdiction agreement entered into by parties on the same dispute.

### **Article 14**

A court of the requested place may not refuse to recognise or enforce a judgment solely because a preliminary issue determined in the judgment does not fall within the scope of application of this Arrangement.

### **Article 15**

Rulings by the original court on the validity of an intellectual property right or whether an intellectual property right is established or subsists are not recognised or enforced. However, a ruling on liability based on such rulings and which complies with the relevant requirements of this Arrangement, shall be recognised and enforced.

### **Article 16**

Reciprocal recognition and enforcement of judgments includes both monetary and non-monetary rulings.

Where the judgment provides for punitive or exemplary damages, the punitive or exemplary part of the damages would not be recognised and enforced except as provided under Article 17.

#### **Article 17**

For tortious claims for infringement of intellectual property rights and civil disputes over acts of unfair competition under Article 6 of the *Anti-Unfair Competition Law of the People's Republic of China* heard by a people's court of the Mainland, or disputes over passing off heard by a court of the HKSAR, reciprocal recognition and enforcement of the judgments of the courts of the Mainland and of the HKSAR is confined to rulings on monetary damages, including punitive or exemplary damages, for acts of infringement which were committed in the requesting place.

Reciprocal recognition and enforcement of a judgment concerning disputes over the infringement of trade secrets shall include both monetary (including punitive or exemplary damages) and non-monetary rulings.

#### **Article 18**

In respect of judgments for the award of property, the scope of recognition and enforcement by the courts of the Mainland and of the HKSAR shall include the property awarded, the corresponding interest, costs, payment for late compliance, or interest for late compliance awarded in the judgment, but shall not include taxes and penalties.

“Costs” referred to in the preceding paragraph, in the case of the HKSAR, means the costs taxed in an allocator or the costs awarded under an order.

#### **Article 19**

Where a court of the requested place cannot recognise and enforce a judgment in whole, it may recognise and enforce it in part.

#### **Article 20**

Where, in the case of a judgment given by a court of the HKSAR, a party has lodged an appeal, a people's court of the Mainland may, upon examination and verification of the above, suspend the recognition and enforcement proceeding. After the appeal, the

recognition and enforcement proceeding shall be resumed if the original judgment is upheld in whole or in part, or terminated if the original judgment is reversed.

Where, in the case of a judgment given by a people's court of the Mainland, a decision of retrial has been made by a people's court of the Mainland, the court of the HKSAR may, upon examination and verification of the above, suspend the recognition and enforcement proceeding. After the retrial, the recognition and enforcement proceeding shall be resumed if the original judgment is upheld in whole or in part, or terminated if the original judgment is reversed upon retrial.

#### **Article 21**

Where the respondent has property in both the Mainland and the HKSAR which may be subject to enforcement, the applicant may file applications for enforcement with the courts of the two places respectively.

The court of one place shall, at the request of the court of the other place, provide information on the status of the enforcement of the judgment.

The total amount to be recovered from enforcing the judgment in the courts of the two places respectively must not exceed the amount determined in the judgment.

#### **Article 22**

If in the course of adjudicating a civil and commercial case, the court of one place receives an application brought by a party for the recognition and enforcement of a judgment made by the court of the other place in respect of the same dispute, the application shall be accepted, and the action shall be suspended thereafter. The action shall be terminated or resumed depending on the ruling or order made in respect of the application for recognition and enforcement.

#### **Article 23**

If in the course of examining an application for recognition and enforcement of a judgment, a party brings another action in respect of the same dispute, the action shall not be accepted, and any such action so accepted shall be dismissed.

If the judgment has been recognised and enforced in whole by the court, another action brought by a party in respect of the same dispute shall not be accepted.

Where the recognition and enforcement of a judgment has been refused in whole or in part, the applicant shall not file another application for recognition and enforcement, but the applicant may bring an action regarding the same dispute before the court of the requested place.

#### **Article 24**

A court of the requested place may, before or after accepting any application for recognition and enforcement of a judgment, impose property preservation or mandatory measures in accordance with the law of that place.

#### **Article 25**

The court shall examine the application for recognition and enforcement as soon as possible and make a decision or order.

#### **Article 26**

Where any party is aggrieved by a decision or an order made by a court of the requested place on an application for recognition and enforcement of a judgment, the party may, in the case of the Mainland, apply to a people's court at the next higher level for review within 10 days from the date of service of the decision or, in the case of the HKSAR, lodge an appeal according to its law.

#### **Article 27**

A party who applies for the recognition and enforcement of a judgment shall pay the fees in accordance with the laws and requirements on costs of the requested place.

#### **Article 28**

After this Arrangement is signed, the Supreme People's Court and the HKSAR Government may, after consultation, sign supplementary documents regarding the recognition and enforcement of judgments on the matters stipulated in Article 3 and assistance in preservation measures and interim relief referred to in Article 4.



Any problem arising from the implementation of this Arrangement or any amendment to be made to this Arrangement shall be resolved through consultation between the Supreme People's Court and the HKSAR Government.

#### **Article 29**

Following the promulgation of a judicial interpretation by the Supreme People's Court and the completion of the relevant procedures in the HKSAR, both sides shall announce a date on which this Arrangement shall commence.

This Arrangement shall apply to judgments made by the courts of the Mainland and of the HKSAR on or after the date of commencement of this Arrangement.

#### **Article 30**

Upon commencement of this Arrangement, 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 Pursuant to Choice of Court Agreements between Parties Concerned* shall be terminated.

However, 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 Pursuant to Choice of Court Agreements between Parties Concerned* remains applicable to a "choice of court agreement in writing" within the meaning of that arrangement and signed before the commencement of this Arrangement.

#### **Article 31**

After the commencement of this Arrangement, 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* shall continue to apply.

This Arrangement is signed in duplicate in Beijing, this 18th day of January 2019.

# **Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Bill**

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# A BILL

## To

Make provisions for the enforcement in Hong Kong of judgments in civil or commercial matters given in the Mainland, and for facilitating the recognition and enforcement in the Mainland of such judgments given in Hong Kong, so as to give effect to 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 made between the Supreme People's Court of the People's Republic of China and the Government of the Hong Kong Special Administrative Region; and to provide for related matters.

Enacted by the Legislative Council.

## Part 1

### Preliminary

#### 1. Short title and commencement

- (1) This Ordinance may be cited as the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

#### 2. Interpretation

- (1) In this Ordinance—

***arbitral tribunal*** (仲裁庭) means a sole arbitrator or a panel of arbitrators, and includes an umpire;

***Court*** means the Court of First Instance;

***effective*** (生效)—

(a) in relation to a Mainland Judgment—see section 8; and

(b) in relation to a Hong Kong Judgment—see section 9;

***excluded judgment*** (被排除的判決)—see section 5(1);

***Hong Kong Judgment*** (香港判決) means a judgment, order, decree, allocatur, or certificate of fixed costs, however described, given or made by a court or tribunal in Hong Kong, but does not include an order for interim relief or an anti-suit injunction;

***Hong Kong Judgment in a civil or commercial matter*** (香港民商事判決)—see section 4;

***judgment creditor*** (判定債權人), in relation to a Mainland Judgment or Hong Kong Judgment, means the person in whose favour the Judgment was given, and includes a person in whom the rights under the Judgment have become vested by succession or assignment or otherwise;

***Mainland*** (內地) means the part of China other than Hong Kong, Macao and Taiwan;

***Mainland Anti-Unfair Competition Law*** (《內地反不正當競爭法》) means the Anti-Unfair Competition Law of the People's Republic of China (a translation of “《中華人民共和國反不正當競爭法》”);

***Mainland Judgment*** (內地判決) means a judgment, ruling, conciliatory statement or order of payment given by a court in the Mainland, but does not include a ruling given in respect of an interim measure;

***Mainland Judgment in a civil or commercial matter*** (內地民商事判決)—see section 3;

***original Mainland court*** (內地判案法院), in relation to a Mainland Judgment, means the court in the Mainland by which the Judgment was given;

***original proceedings*** (原本法律程序), in relation to a Mainland Judgment or a Hong Kong Judgment, means the proceedings in which the Judgment is given;

***prescribed fee*** (訂明費用), in relation to a matter, means the fee prescribed for that matter in the rules made under section 35;

***registered judgment*** (已登記判決) means a Mainland Judgment in a civil or commercial matter, or the part of such a Judgment, registered in accordance with a registration order;

***registration application*** (登記申請) means an application under section 10(1) for a registration order;

***registration order*** (登記令) means an order made under section 13(1);

***specified intellectual property right*** (指明知識產權) means—

- (a) a copyright or related right;
- (b) a trade mark;
- (c) a geographical indication;
- (d) an industrial design;
- (e) a patent;
- (f) a layout-design (topography) of integrated circuit;
- (g) a right to protect undisclosed information; or
- (h) a right enjoyed by a person in respect of a new plant variety under subparagraph (7) of the second paragraph of Article 123 of the Civil Law Code of the People's Republic of China (a translation of “《中華人民共和國民法典》”).



- (2) For the purposes of this Ordinance, a reference to a requirement to perform an act includes a prohibition, or a restriction, on the performance of an act.

### **3. Mainland Judgments in civil or commercial matters**

- (1) For the purposes of this Ordinance, a Mainland Judgment in a civil or commercial matter is a Mainland Judgment—
  - (a) that—
    - (i) is given in proceedings that are civil or commercial in nature under the law of the Mainland; or
    - (ii) is given in proceedings that are criminal in nature under the law of the Mainland, and contains an order for the payment of a sum of money in respect of compensation or damages by a party to the proceedings; and
  - (b) that is not an excluded judgment.
- (2) Subsection (3) applies if—
  - (a) a Mainland Judgment is given in respect of different matters; and
  - (b) had separate Mainland Judgments been given in respect of each of those matters, some, but not all, of those separate Mainland Judgments (*qualifying Judgments*) would be a Mainland Judgment mentioned in subsection (1).
- (3) For the purposes of this Ordinance—
  - (a) the matter in respect of which a qualifying Judgment is given is a qualifying matter; and
  - (b) the part of the Mainland Judgment given in respect of a qualifying matter is a Mainland Judgment in a civil or commercial matter as if the part given in respect of a non-

qualifying matter were not contained in the Mainland Judgment.

**4. Hong Kong Judgments in civil or commercial matters**

- (1) For the purposes of this Ordinance, a Hong Kong Judgment in a civil or commercial matter is a Hong Kong Judgment—
  - (a) that—
    - (i) is given in civil proceedings, other than—
      - (A) proceedings brought by way of judicial review; or
      - (B) any other proceedings arising directly out of the exercise of an administrative power; or
    - (ii) is given in criminal proceedings, and contains an order for the payment of a sum of money in respect of compensation or damages by a party to the proceedings; and
  - (b) that is not an excluded judgment.
- (2) Subsection (3) applies if—
  - (a) a Hong Kong Judgment is given in respect of different matters; and
  - (b) had separate Hong Kong Judgments been given in respect of each of those matters, some, but not all, of those separate Hong Kong Judgments (*qualifying Judgments*) would be a Hong Kong Judgment mentioned in subsection (1).
- (3) For the purposes of this Ordinance—
  - (a) the matter in respect of which a qualifying Judgment is given is a qualifying matter; and
  - (b) the part of the Hong Kong Judgment given in respect of a qualifying matter is a Hong Kong Judgment in a civil or

commercial matter as if the part given in respect of a non-qualifying matter were not contained in the Hong Kong Judgment.

**5.     Meaning of *excluded judgment***

- (1) For the purposes of this Ordinance, a Mainland Judgment or Hong Kong Judgment is an excluded judgment if—
  - (a) it is given in respect of an excluded matrimonial or family case within the meaning of section 6;
  - (b) it is given in respect of a matter relating to the succession to, or the administration or distribution of, an estate;
  - (c) it is given in respect of an excluded intellectual property case within the meaning of section 7;
  - (d) it is given in respect of a matter relating to—
    - (i) marine pollution;
    - (ii) the limitation of liability for a maritime claim;
    - (iii) general average;
    - (iv) an emergency towage or salvage;
    - (v) a maritime lien; or
    - (vi) the carriage of passengers by sea;
  - (e) it is given in respect of a matter relating to the insolvency of an entity other than a natural person or the bankruptcy of a natural person;
  - (f) it is given in—
    - (i) specified election proceedings;
    - (ii) proceedings for a declaration of the disappearance or death of a natural person; or

- (iii) proceedings for a determination as to whether a natural person is a person with no or limited legal capacity for performing civil acts;
  - (g) it is given in proceedings for a confirmation of the validity of an arbitration agreement or for an order to set aside an arbitral award;
  - (h) it is given in proceedings for the recognition or enforcement of a judgment given by—
    - (i) for a Mainland Judgment—a court in a place outside the Mainland; or
    - (ii) for a Hong Kong Judgment—a court in a place outside Hong Kong;
  - (i) it is given in proceedings for the recognition or enforcement of an arbitral award made by an arbitral tribunal in an arbitration for which—
    - (i) for a Mainland Judgment—the place of arbitration was not in the Mainland; or
    - (ii) for a Hong Kong Judgment—the place of arbitration was not in Hong Kong; or
  - (j) it is given pursuant to—
    - (i) for a Mainland Judgment—a choice of Mainland court agreement made before the commencement date of this Ordinance; or
    - (ii) for a Hong Kong Judgment—a choice of Hong Kong court agreement made before the commencement date of this Ordinance.
- (2) In subsection (1)—
- choice of Hong Kong court agreement*** (選用香港法院協議) has the meaning given by section 2 of the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597);

***choice of Mainland court agreement*** (選用內地法院協議) has the meaning given by section 2 of the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597);

***specified election proceedings*** (指明選舉法律程序)—

- (a) in relation to a Mainland Judgment, means proceedings brought under Article 181 of the Civil Procedure Law of the People’s Republic of China (a translation of “《中華人民共和國民事訴訟法》”); and
- (b) in relation to a Hong Kong Judgment—means proceedings for a determination of a natural person’s qualification as an elector or a voter in an election set out in section 4(1) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554).

**6. Supplementary provisions for section 5(1)(a): excluded matrimonial or family cases**

- (1) For the purposes of section 5(1)(a), a Mainland Judgment is given in respect of an excluded matrimonial or family case if—
  - (a) it is given in a matrimonial or family case within the meaning of section 3(2) of the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639);
  - (b) it is given in respect of a dispute over the confirmation of an adoptive relationship; or
  - (c) it is given in respect of a matter relating to—
    - (i) the payment of maintenance arising out of the legal obligation of a person to support the person’s parent or grandparent;
    - (ii) the payment of maintenance between siblings;
    - (iii) the dissolution of an adoptive relationship;
    - (iv) the guardianship over an adult;

- (v) the liability for damages after a divorce; or
  - (vi) the division of property arising from a cohabitation relationship.
- (2) For the purposes of section 5(1)(a), a Hong Kong Judgment is given in respect of an excluded matrimonial or family case if—
  - (a) it is a Hong Kong Judgment given in a matrimonial or family case within the meaning of section 4 of the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639); or
  - (b) it is a decree of judicial separation.

**7. Supplementary provisions for section 5(1)(c): excluded intellectual property cases**

- (1) For the purposes of section 5(1)(c), a Mainland Judgment is given in respect of an excluded intellectual property case if—
  - (a) it is given in proceedings brought in respect of a tortious dispute over an infringement of an invention patent or utility model patent; or
  - (b) it is given in proceedings for a determination of the licence fee rate of a standard-essential patent.
- (2) For the purposes of section 5(1)(c), a Hong Kong Judgment is given in respect of an excluded intellectual property case if—
  - (a) it is given in proceedings brought in respect of a tortious dispute over an infringement of a standard patent, or short-term patent, as defined by section 2(1) of the Patents Ordinance (Cap. 514); or
  - (b) it is given in proceedings for a determination of the licence fee rate of a standard-essential patent.

## **8. Effective Mainland Judgments**

- (1) For the purposes of this Ordinance, a Mainland Judgment is effective in the Mainland—
  - (a) if it is enforceable in the Mainland; and
  - (b) if—
    - (i) it is a Mainland Judgment given by the Supreme People's Court;
    - (ii) it is a Mainland Judgment of the second instance given by a High People's Court or an Intermediate People's Court; or
    - (iii) it is a Mainland Judgment of the first instance given by a High 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.
- (2) A Mainland Judgment mentioned in subsection (1)(b)(i), (ii) or (iii) includes a Mainland Judgment given according to the trial supervision procedure of the Mainland.

## **9. Effective Hong Kong Judgments**

For the purposes of this Ordinance, a Hong Kong Judgment is effective in Hong Kong if—

- (a) it is enforceable in Hong Kong; and
- (b) it is given by—
  - (i) the Court of Final Appeal;
  - (ii) the Court of Appeal;

- (iii) the Court of First Instance;
  - (iv) the Competition Tribunal;
  - (v) the District Court;
  - (vi) the Lands Tribunal;
  - (vii) the Labour Tribunal; or
  - (viii) the Small Claims Tribunal.
-



## **Part 2**

# **Registration in Hong Kong of Mainland Judgments in Civil or Commercial Matters**

## **Division 1—Registration Applications**

### **10. Registration applications**

- (1) Subject to section 11, a judgment creditor under a Mainland Judgment in a civil or commercial matter may apply to the Court for a registration order to register the Judgment, or any part of the Judgment, if—
  - (a) the Judgment—
    - (i) was given on or after the commencement date of this Ordinance; and
    - (ii) is effective in the Mainland; and
  - (b) the following conditions are satisfied—
    - (i) the Judgment or part requires the payment of a sum of money, or the performance of an act, by a party to the original proceedings for the Judgment;
    - (ii) a default in complying with the requirement occurred within 2 years before the date of the application; and
    - (iii) the default has not been made good as at the date of the application.
- (2) The registration application must be accompanied by the prescribed fee.

## **11. Supplementary provisions for registration applications**

- (1) If a Mainland Judgment in a civil or commercial matter requires the payment of more than one sum of money or the performance of more than one act (whether or not in stages) by a party to the original proceedings for the Judgment, a registration application may only be made for a registration order to register the Judgment to the extent that it relates to a sum of money or an act that is a qualifying sum or act.
- (2) However, if a non-qualifying sum or act becomes a qualifying sum or act after a registration application has been made, a judgment creditor may make a further registration application for a registration order to register the Judgment to the extent that it relates to the sum or act.
- (3) If a Mainland Judgment in a civil or commercial matter requires a sum of money or an act to be paid or performed in stages by a party to the original proceedings for the Judgment, a registration application may not be made for a registration order to register the Judgment to the extent that it relates to a sum of money or an act required to be paid or performed in a particular stage unless a default in complying with the requirement for that stage occurred within 2 years before the date of the application.
- (4) For the purposes of this section, a sum of money or an act is a qualifying sum or act if—
  - (a) a default in complying with the requirement to pay the sum of money, or to perform the act, occurred within 2 years before the date of the registration application concerned; and
  - (b) the default has not been made good as at the date of the application.

**12. Date on which default occurs**

For the purposes of sections 10(1)(b)(ii) and 11(3) and (4)(a), the following date is to be regarded as the date on which a default in complying with a requirement under a Mainland Judgment in a civil or commercial matter to pay a sum of money, or to perform an act, occurs—

- (a) for a prohibition, or a restriction, on the performance of the act—the date on which a non-compliance first occurs; or
- (b) in any other case—
  - (i) if the Judgment specifies a date by which the sum of money is to be paid, or the act is to be performed—that date; or
  - (ii) if the Judgment does not specify a date by which the sum of money is to be paid, or the act is to be performed—the date on which the Judgment becomes effective in the Mainland.

**Division 2—Registration Orders and Registration**

**13. Registration orders**

- (1) On a registration application made in relation to a Mainland Judgment in a civil or commercial matter or a part of such a Judgment, the Court may order the Judgment, or any part of the Judgment, to be registered in accordance with this Division if it is satisfied that the application is made in compliance with sections 10 and 11.
- (2) For the purposes of subsection (1), until the contrary is proved, a Mainland Judgment is presumed to be a Mainland Judgment in a civil or commercial matter that is effective in the Mainland if a certificate certifying those facts is issued by the original Mainland court.

- (3) On the making of a registration order in relation to a Mainland Judgment in a civil or commercial matter or any part of such a Judgment, the Judgment or part is taken as registered in accordance with the registration order.

**14. Registration of Mainland Judgments given in criminal proceedings**

- (1) This section applies if—
  - (a) a Mainland Judgment in a civil or commercial matter, or any part of such a Judgment, is ordered to be registered under section 13(1); and
  - (b) the Judgment or part—
    - (i) is given in proceedings that are criminal in nature under the law of the Mainland; and
    - (ii) contains an order for the payment of a sum of money in respect of compensation or damages by a party to the proceedings.
- (2) The Judgment or part may only be registered to the extent that it relates to the payment.

**15. Registration of Mainland Judgments containing rulings on validity etc. of specified intellectual property rights**

- (1) This section applies if—
  - (a) a Mainland Judgment in a civil or commercial matter, or any part of such a Judgment, is ordered to be registered under section 13(1); and
  - (b) the Judgment or part contains a ruling on the validity, establishment or subsistence of a specified intellectual property right (*subject ruling*).
- (2) The Judgment or part must not be registered to the extent that it relates to a subject ruling.

- (3) To avoid doubt, subsection (2) does not prohibit the registration of the Judgment or part to the extent that it relates to a ruling on liability based on a subject ruling.

## **16. Registration of certain reliefs awarded under Mainland Judgments**

- (1) This section applies if—
  - (a) a Mainland Judgment in a civil or commercial matter, or any part of such a Judgment, is ordered to be registered under section 13(1); and
  - (b) the Judgment or part is given in respect of—
    - (i) a tortious dispute over an infringement of a specified intellectual property right (other than an infringement of a right in a trade secret); or
    - (ii) a civil dispute over an act of unfair competition under Article 6 of the Mainland Anti-Unfair Competition Law.
- (2) The Judgment or part must not be registered to the extent that it relates to an excluded relief.
- (3) In subsection (2)—

***excluded relief*** (被排除的濟助) means a relief other than monetary damages, including punitive or exemplary damages, awarded in respect of an infringement or act of unfair competition committed in the Mainland.

## **17. Registration of sums payable etc. under Mainland Judgments**

- (1) This section applies if—
  - (a) a registration application is made in relation to a Mainland Judgment in civil or commercial matter, or a part of such a Judgment, that requires a sum of money or an act to be

- paid or performed by a party to the original proceedings for the Judgment (***relevant sum or act***); and
- (b) the application relates to the relevant sum or act, or any part of the relevant sum or act (***sum or act under application***).
- (2) The Court may only order under section 13(1) that the Judgment is to be registered to the extent that it relates to a sum or an act under application that—
- (a) is required by the Judgment to be paid or performed before the date of the application; and
  - (b) has not been paid or performed.
- (3) Despite subsection (2), if a relevant sum or act is required by the Judgment to be paid or performed in stages, the Court may, in addition, order under section 13(1) that the Judgment is also to be registered to the extent that it relates to any part of the relevant sum or act, whether or not it is a sum or act under application, that—
- (a) is required by the Judgment to be paid or performed on or after the date of registration application; and
  - (b) has not been paid or performed.

**18. Sums to be included on registration of Mainland Judgments**

- (1) This section applies to a Mainland Judgment in a civil or commercial matter, or any part of such a Judgment, ordered to be registered under section 13(1).
- (2) The Judgment or part must also be registered for the following sums as if they were required to be paid under the Judgment or part—
  - (a) any interest that, under the law of the Mainland, becomes due under the Judgment or part up to the time of the registration;

- (b) any costs duly certified by the original Mainland court;
  - (c) any fine or charge payable by a party to another party to the original proceedings for the Judgment for failing to comply with the Judgment or part within the time stipulated in the Judgment or part; and
  - (d) any reasonable costs of, or incidental to, the registration of the Judgment or part, including the costs of obtaining a copy of the Judgment duly sealed by the original Mainland court.
- (3) To avoid doubt, the Judgment or part must not be registered for any of the following sums—
  - (a) a tax or other charge of a like nature;
  - (b) a fine or other penalty, other than a fine or charge described in subsection (2)(c);
  - (c) punitive or exemplary damages, other than those awarded in proceedings brought in respect of—
    - (i) a tortious dispute over an infringement of a specified intellectual property right committed in the Mainland; or
    - (ii) a civil dispute over an act of unfair competition under Article 6 of the Mainland Anti-Unfair Competition Law committed in the Mainland.

**19. Sums denominated in currency other than Hong Kong dollars**

- (1) This section applies if—
  - (a) a sum of money is required to be paid under a Mainland Judgment in a civil or commercial matter, or any part of such a Judgment; and
  - (b) the sum payable is denominated in a currency other than Hong Kong dollars.

- (2) The Judgment or part, when registered in accordance with a registration order, must be registered as if the Judgment or part required the payment of a sum denominated in Hong Kong dollars that, on the basis of the rate of exchange prevailing on the day of registration of the Judgment or part, is equivalent to the sum payable under the Judgment or part.

### **Division 3—Setting Aside Registration**

#### **20. Court to specify time limit for setting aside registration**

- (1) The Court must, when making a registration order for a Mainland Judgment in a civil or commercial matter, or any part of such a Judgment, to be registered, specify the period within which an application for setting aside the registration may be made.
- (2) The Court may extend the period (either as originally specified or as subsequently extended) within which an application mentioned in subsection (1) may be made.

#### **21. Applications for setting aside registration**

A person against whom a registered judgment may be enforced may, within the period specified under section 20(1) (or as extended under section 20(2)), apply to the Court to set aside the registration of the judgment or any part of the judgment.

#### **22. Setting aside registration**

- (1) The Court must, on an application made under section 21 for setting aside the registration of a registered judgment or a part of such a judgment, set aside the registration if the applicant has proved to the satisfaction of the Court that—
  - (a) a provision in Division 1 or 2 has not been complied with;



- (b) the jurisdictional requirement is not satisfied in respect of the original proceedings for the registered judgment;

**Note (with no legislative effect)—**

See section 23 for the circumstances in which the jurisdictional requirement is satisfied in respect of the original proceedings.

- (c) the defendant to the original proceedings for the registered judgment was not summoned to appear in the original Mainland court according to the law of the Mainland, or the defendant was so summoned but was not given a reasonable opportunity to make submissions or defend the proceedings;
- (d) the registered judgment was obtained by fraud;
- (e) the original proceedings for the registered judgment 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;
- (f) a court in Hong Kong has given a judgment on the same cause of action between the same parties;
- (g) 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 or enforced by a court in Hong Kong;
- (h) an arbitral tribunal has made an arbitral award on the same cause of action between the same parties in an arbitration for which the place of arbitration was in Hong Kong;
- (i) an arbitral tribunal has made an arbitral award on the same cause of action between the same parties in an arbitration for which the place of arbitration was not in Hong Kong, and the award has already been recognized or enforced by a court in Hong Kong;

- (j) the enforcement of the registered judgment is manifestly incompatible with the public policy of Hong Kong; or
  - (k) the registered judgment has been reversed or otherwise set aside pursuant to an appeal or a retrial mentioned in section 24.
- (2) The Court may, on an application made under section 21 for setting aside the registration of a registered judgment or a part of such a judgment, set aside the registration if the applicant has proved to the satisfaction of the Court that the original proceedings for the registered judgment in the original Mainland court was contrary to a valid arbitration agreement or a valid jurisdiction agreement entered into by the same parties on the same cause of action.
- (3) To avoid doubt, the Court is not required by subsection (1), or authorized by subsection (2), to set aside the registration of a registered judgment or a part of such a judgment solely on the basis of a preliminary issue determined in the original proceedings for the judgment.
- (4) On the setting aside of the registration of a registered judgment, or any part of such a judgment, under this section, the judgment or part ceases to be registered in accordance with a registration order.

**23. Jurisdictional requirement for section 22(1)(b)**

- (1) For the purposes of section 22(1)(b), the jurisdictional requirement is satisfied in respect of the original proceedings for a registered judgment—
  - (a) if—
    - (i) for proceedings brought in respect of a tortious dispute over the infringement of a specified intellectual property right or a civil dispute over an act of unfair competition under Article 6 of the

Mainland Anti-Unfair Competition Law—the condition in subsection (2) is satisfied; or

- (ii) for proceedings brought in respect of a dispute that is not a dispute mentioned in subparagraph (i)—any one of the conditions in subsection (3) is satisfied, and the courts in Hong Kong do not have exclusive jurisdiction over the proceedings; or
  - (b) if the Court considers that the exercise of jurisdiction by the original Mainland court over the proceedings is consistent with the law of Hong Kong.
- (2) For the purposes of subsection (1)(a)(i), the condition is that—
- (a) the infringement or act of unfair competition was committed in the Mainland; and
  - (b) the specified intellectual property right or interest concerned is subject to protection under the law of the Mainland.
- (3) For the purposes of subsection (1)(a)(ii), the conditions are—
- (a) that at the time the original Mainland court accepted the proceedings, the place of residence of the defendant to the proceedings was within the Mainland;
  - (b) that at the time the original Mainland court accepted the proceedings, the defendant to the proceedings maintained in the Mainland a representative office, branch, office, place of business or any other establishment without separate legal personality (*relevant office*), and the proceedings arose out of the activities of the relevant office;
  - (c) that the proceedings were brought in respect of a contractual dispute, and the place of performance of the contract was in the Mainland;

- (d) that the proceedings were brought in respect of a tortious dispute, and the tortious act was committed in the Mainland;
  - (e) that—
    - (i) the proceedings were brought in respect of a contractual dispute or other dispute concerning interests in property;
    - (ii) the parties to the proceedings had expressly agreed in written form that the courts in the Mainland were to have jurisdiction over the proceedings; and
    - (iii) if the places of residence of all the parties to the proceedings were in Hong Kong—there was an actual connection between the Mainland and the dispute, such as the contract was or was to be performed, or signed, in the Mainland, or the subject matter was situated in the Mainland; and
  - (f) that—
    - (i) the parties to the proceedings brought in respect of a dispute did not raise any objection to the jurisdiction of the original Mainland court over the proceedings, and appeared in the original Mainland court to defend the proceedings; and
    - (ii) if the places of residence of all the parties to the proceedings were in Hong Kong—there was an actual connection between the Mainland and the dispute, such as the contract was or was to be performed, or signed, in the Mainland, or the subject matter was situated in the Mainland.
- (4) For the purposes of subsection (3)(e)(ii), an agreement is in written form if it is concluded or evidenced by a means (including an electronic means such as an electronic data

message, a telegram, a telex, a fax, an electronic data interchange or an electronic mail) by which—

- (a) the agreement is capable of being displayed in visible form; and
- (b) information is accessible so as to be usable for subsequent reference.

(5) In this section—

***place of residence*** (居住地) means—

- (a) for a natural person—the person’s place of household registration, place of permanent residence or place of habitual residence; or
- (b) for an entity other than a natural person—its place of incorporation or registration, place of principal office, principal place of business or principal place of management.

## **24. Court may adjourn applications for setting aside registration**

- (1) This section applies if, on an application made under section 21 for setting aside the registration of a registered judgment or a part of such a judgment, the Court is satisfied that, even though the judgment is effective in the Mainland under section 8—
  - (a) an appeal against the judgment is pending; or
  - (b) the case on which the judgment was based is ordered to be retried.
- (2) The Court may, on the terms it considers just, adjourn the application until after the expiry of the period that appears to the Court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal or retrial disposed of.

**25. Restriction on further registration applications**

- (1) If the Court sets aside the registration of a registered judgment, or any part of such a judgment, (*original registration*) under section 22, the person who made the registration application for the original registration may not make a further registration application to register the judgment or part.
- (2) Subsection (1) does not apply if the original registration is set aside solely on the ground set out in section 22(1)(a).

**Division 4—Effect of Registration etc.**

**26. Effect of registration of Mainland Judgments**

- (1) Subject to section 27, a registered judgment may be enforced in Hong Kong as if—
  - (a) it were a judgment originally given by the Court and the Court had jurisdiction to give it; and
  - (b) it were given on the day of registration of the judgment.
- (2) Without limiting subsection (1)—
  - (a) proceedings may be brought for, or with respect to, the enforcement of the judgment;
  - (b) a sum of money required to be paid under the judgment carries interest; and
  - (c) the Court has the same control over the execution of the judgment,  
as if it were a judgment originally given by the Court on the day of registration of the judgment.
- (3) Sums of money required to be paid, or acts required to be performed, under the judgment are to be paid or performed in accordance with the judgment beginning on the date on which they are required to be paid or performed under the judgment.

**27. No enforcement before end of setting aside procedure**

- (1) An action to enforce a registered judgment may be taken only after the expiry of the period within which an application for setting aside the registration of the judgment may be made under section 21.
- (2) However, if an application under section 21 is made during the period mentioned in subsection (1), an action to enforce the judgment may be taken only after the application has been finally disposed of.

**28. Recognition of Mainland Judgments in proceedings**

- (1) This section applies to a Mainland Judgment in a civil or commercial matter, or any part of such a Judgment, that—
  - (a) is a registered judgment; or
  - (b) is not a registered judgment but, had a registration application been made in relation to the Judgment or part, section 10(1)(a) would be complied with.
- (2) The Judgment or part is to be recognized in a court in Hong Kong as conclusive in any proceedings in respect of the same cause of action between the parties and may be relied on by way of defence or counterclaim in any such proceedings.
- (3) Subsection (2) does not apply if—
  - (a) where the Judgment or part has been registered—the registration of the Judgment or part has been set aside under section 22 on a ground other than that set out in section 22(1)(a); or
  - (b) where the Judgment or part has not been registered—it is shown that, had it been registered, the registration of the Judgment or part would have been set aside under section 22 on an application made under section 21 on a ground other than that set out in section 22(1)(a).

- (4) This section does not prevent a court in Hong Kong from recognizing a Mainland Judgment as conclusive of any matter of law or fact decided in the Judgment if the Judgment would be recognized as conclusive under the common law before the commencement date of this Ordinance.

## **Division 5—Restriction on Hong Kong Court Proceedings**

### **29. Stay of Hong Kong proceedings if registration applications are made**

- (1) This section applies if—
- (a) a registration application is made in relation to a Mainland Judgment in a civil or commercial matter, or any part of such a Judgment, given on a cause of action between particular parties; and
  - (b) proceedings (***HK proceedings***) are pending before a court in Hong Kong (***adjudicating court***) in respect of the same cause of action between the same parties.
- (2) The applicant of the registration application must notify the adjudicating court of the application as soon as the application is made.
- (3) On receiving the notification, the adjudicating court must order that the HK proceedings be stayed.
- (4) When a stay order is made under subsection (3), the HK proceedings are stayed until the adjudicating court, on its own initiative or on the application of a party to the HK proceedings, orders that the HK proceedings (or any part of them) be resumed or terminated.
- (5) The adjudicating court may only make a resumption or termination order under subsection (4) if—



- (a) the registration application has been finally disposed of; and
- (b) if a registration order to register the Judgment or part is made—
  - (i) the period within which an application for setting aside the registration may be made under section 21 has expired and no such application has been made; or
  - (ii) an application for setting aside the registration is made under section 21 and the application has been finally disposed of.

**30. Restriction on bringing proceedings in respect of same cause of action in Hong Kong**

- (1) This section applies if—
  - (a) a registration application made in relation to a Mainland Judgment in a civil or commercial matter, or any part of such a Judgment is pending; or
  - (b) the Judgment or part is registered in accordance with a registration order.
- (2) Except as provided by subsection (3), a party to the original proceedings for the Judgment may not bring in a court in Hong Kong proceedings in respect of the same cause of action on which the Judgment or part was given.
- (3) If the registration of the Judgment or part as mentioned in subsection (1)(b) has been set aside under section 22, that subsection does not prevent the party from bringing the proceedings in a court in Hong Kong.

**31. Restriction on bringing proceedings for execution of Mainland Judgments other than by way of registration**

A court in Hong Kong may not entertain any proceedings for the recovery of a sum of money required to be paid or the execution of any other relief ordered under a Mainland Judgment in a civil or commercial matter that is given on or after the commencement date of this Ordinance and that is effective in the Mainland, other than—

- (a) proceedings for registration under section 13(1); or
- (b) proceedings for the execution of a registered judgment.

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## **Part 3**

### **Facilitation of Recognition and Enforcement in Mainland of Hong Kong Judgments in Civil or Commercial Matters**

#### **32. Hong Kong Judgments to which this Part applies**

This Part applies to a Hong Kong Judgment in a civil or commercial matter that is—

- (a) given on or after the commencement date of this Ordinance; and
- (b) effective in Hong Kong.

#### **33. Applications for certified copies of Hong Kong Judgments**

- (1) Subject to subsection (3), a judgment creditor under a Hong Kong Judgment in a civil or commercial matter may apply for a certified copy of the Judgment.
- (2) The application must—
  - (a) be made to—
    - (i) if the Judgment was given by the Court of Appeal or Court of First Instance—the High Court; or
    - (ii) if the Judgment was given by any other court or tribunal—the court or tribunal by which the Judgment was given; and
  - (b) be accompanied by the prescribed fee.
- (3) If the execution of a Hong Kong Judgment in a civil or commercial matter is stayed for any period pending an appeal or for any other reason, an application may not be made under

this section in respect of the Judgment until the expiry of that period.

**34. Issue of certified copies of Hong Kong Judgments and certificates for Hong Kong Judgments**

- (1) If an application under section 33 is made to a court or tribunal in respect of a Hong Kong Judgment in a civil or commercial matter, the court or tribunal must issue to the applicant a certified copy of the Judgment.
- (2) When issuing a certified copy of the Judgment, the court or tribunal must also—
  - (a) issue to the applicant a certificate—
    - (i) certifying that the Judgment is a Hong Kong Judgment in a civil or commercial matter and is effective in Hong Kong; and
    - (ii) containing the particulars that may be prescribed by the rules made under section 35; and
  - (b) annex to the certificate the documents that may be prescribed by the rules made under section 35.

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## **Part 4**

### **Miscellaneous**

#### **35. Rules**

The Chief Judge may make rules—

- (a) to provide for the practice and procedure relating to—
  - (i) an application under this Ordinance; and
  - (ii) the execution of a registered judgment;
- (b) to prescribe the fees payable under this Ordinance;
- (c) to prescribe any matter that under this Ordinance is to be prescribed by rules made under this section; and
- (d) to provide generally for the better carrying out of the purposes and provisions of this Ordinance.

#### **36. Related amendment**

The Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) is amended as set out in the Schedule.

---

Schedule

[s. 36]

Related Amendment to Mainland Judgments  
(Reciprocal Enforcement) Ordinance

1. Section 5 amended (application for registration of Mainland judgments)

Section 5(2)(b)—

Repeal

“date of commencement of this Ordinance”

Substitute

“commencement date of this Ordinance but before the commencement date of the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance ( of )”.

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## **Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Rules**

(Made by the Chief Judge under section 35 of the Mainland Judgments in  
Civil and Commercial Matters (Reciprocal Enforcement) Ordinance  
( of ))

### **Part 1**

#### **Preliminary**

##### **1. Commencement**

These rules come into operation on the day on which the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance ( of ) comes into operation.

##### **2. Interpretation**

In these rules—

***identity card*** (身分證) has the meaning given by section 1A(1) of the Registration of Persons Ordinance (Cap. 177);

***proof of identity*** ( 身分證明文件), in relation to a person, means—

- (a) the person's identity card; or
- (b) if the person is not a holder of an identity card, an identification document of the person notarized or otherwise duly authenticated in accordance with the law of the place in which the document was issued;

***setting aside application*** (尋求作廢申請) means an application under section 21 of the Ordinance.

**3. Application of Rules of High Court to proceedings under Ordinance**

Except as provided by these rules, the practice and procedure under the Rules of the High Court (Cap. 4 sub. leg. A) apply, with necessary modifications, in relation to all proceedings under the Ordinance before the Court.

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## **Part 2**

# **Registration of Mainland Judgments in Civil or Commercial Matters**

## **Division 1—Registration Applications**

### **4. Registration applications**

- (1) A registration application may be made ex parte to the Court.
- (2) Despite subrule (1), the Court may direct a registration application be made by originating summons.
- (3) An originating summons under this rule must be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).
- (4) A registration application must be supported by an affidavit made in compliance with Division 2.

## **Division 2—Affidavits in Support**

### **5. Affidavits for all registration applications: particulars of parties and Mainland Judgments**

- (1) An affidavit in support of a registration application must exhibit the following documents—
  - (a) if the applicant is a natural person—a copy of the applicant's proof of identity;
  - (b) if the applicant is a body of persons incorporated, formed or established under the law of Hong Kong—

- (i) a verified or certified or otherwise duly authenticated copy of its certificate of incorporation or any other similar document; and
  - (ii) a copy of the proof of identity of one director or authorized representative of the applicant; or
- (c) if the applicant is a body of persons incorporated, formed or established under the law of a place outside Hong Kong—
  - (i) a verified or certified or otherwise duly authenticated copy of a document stating that the body was incorporated, formed or established in accordance with the law of that place; and
  - (ii) a copy of the proof of identity of one director or authorized representative of the applicant.
- (2) The affidavit must also exhibit the following documents—
  - (a) a copy of the Mainland Judgment duly sealed by the original Mainland court; and
  - (b) a certificate issued by the original Mainland court certifying that the Mainland Judgment is a Mainland Judgment in a civil or commercial matter that is effective in the Mainland.
- (3) The deponent must state in the affidavit, to the best of the deponent's information or belief, the following particulars in relation to the applicant and each of the other parties to the original proceedings for the Judgment—
  - (a) if the applicant or the party is a natural person—
    - (i) the name;
    - (ii) the usual or last known address;

- (iii) the number of the identity card or, if the applicant or the party is not a holder of an identity card, the type and number of any other identification document; and
  - (iv) a means of contact; or
- (b) if the applicant or the party is a body of persons—
  - (i) the name;
  - (ii) the usual or last known place of business; and
  - (iii) the following particulars of one director or authorized representative of the applicant or the party—
    - (A) the name, the position and the usual or last known address;
    - (B) the number of the identity card or, if the director or the authorized representative is not a holder of an identity card, the type and number of any other identification document; and
    - (C) a means of contact.
- (4) The deponent must also state in the affidavit, to the best of the deponent's information or belief—
  - (a) that the Mainland Judgment is a Mainland Judgment in a civil or commercial matter; and
  - (b) that, at the date of the application, the Mainland Judgment is effective in the Mainland.

**6. Affidavits for all registration applications: other particulars**

- (1) The deponent of an affidavit in support of a registration application made in relation to a Mainland Judgment in a civil

or commercial matter, or any part of such a Judgment, must also state in the affidavit—

- (a) that, to the best of the deponent's information or belief, the Judgment or part requires the payment of a sum of money, or the performance of an act, by a party to the original proceedings for the Judgment; and
  - (b) if the Judgment or part requires the payment of more than one sum of money or the performance of more than one act—
    - (i) whether the application relates to all those sums of money or acts; and
    - (ii) if the application relates to only some, but not all, of those sums of money or acts—the sums of money or acts to which the application relates.
- (2) The deponent must also state in the affidavit, to the best of the deponent's information or belief—
- (a) that the applicant is entitled to enforce the Judgment or part in the Mainland;
  - (b) whether any action has been taken to enforce the Judgment or part and, if so, the details of the enforcement;
  - (c) whether proceedings are pending before a court in Hong Kong in respect of the same cause of action between the same parties; and
  - (d) that, if the Judgment or part were registered, the registration would not be, or be liable to be, set aside under section 22 of the Ordinance.
- (3) The affidavit must also specify—
- (a) the interest that, under the law of the Mainland, has become due under the Judgment or part up to the time of the registration;

- (b) the costs duly certified by the original Mainland court;
  - (c) the fine or charge payable by a party to another party to the original proceedings for the Judgment for failing to comply with the Judgment or part within the time stipulated in the Judgment or part; and
  - (d) the reasonable costs of, or incidental to, the registration of the Judgment or part that the applicant intends to claim.
- (4) The affidavit must be accompanied by—
  - (a) evidence relevant to the enforceability of the Judgment or part; and
  - (b) if the interest, costs, fine or charge mentioned in subrule (3) is specified in the affidavit—evidence of the law of the Mainland under which the interest, costs, fine or charge has become due.

**7. Affidavits for registration applications: Mainland Judgments given partly in respect of civil or commercial matter**

- (1) This rule applies if—
  - (a) a Mainland Judgment is given in respect of different matters and some, but not all, of those matters are qualifying matters (within the meaning of section 3(3)(a) of the Ordinance); and
  - (b) a registration application is made for a registration order to register the Judgment to the extent that it relates to a qualifying matter.
- (2) The deponent of an affidavit in support of the application must also state in the affidavit, to the best of the deponent's information or belief, the part of the Judgment that is given in respect of a qualifying matter.



**8. Affidavits for registration applications: Mainland Judgments prohibiting or restricting performance of acts**

- (1) This rule applies if—
  - (a) a registration application is made in relation to a Mainland Judgment in a civil or commercial matter that prohibits or restricts the performance of an act; and
  - (b) the application relates to the prohibition or restriction.
- (2) The deponent of an affidavit in support of the application must also state in the affidavit, to the best of the deponent's information or belief—
  - (a) whether there has been a non-compliance with the prohibition or restriction; and
  - (b) the date on which the non-compliance first occurred.

**9. Affidavits for registration applications: Mainland Judgments requiring sums of money or acts to be paid or performed (other than in stages)**

- (1) This rule applies if—
  - (a) either—
    - (i) a registration application is made in relation to a Mainland Judgment in a civil or commercial matter that requires the payment of a sum of money; or
    - (ii) a registration application is made in relation to a Mainland Judgment in a civil or commercial matter that requires the performance of an act, and the requirement is not a prohibition, or a restriction, on the performance of an act;
  - (b) the Judgment does not require the sum of money or act to be paid or performed in stages; and

- (c) the application relates to the sum of money or act.
- (2) The deponent of an affidavit in support of the application must also state in the affidavit, to the best of the deponent's information or belief—
  - (a) the details of the property of the person against whom the Judgment is enforceable under the law of the Mainland and the financial status of the person (as the case requires);
  - (b) whether the Judgment specifies a date by which the sum of money is to be paid, or the act is to be performed, and—
    - (i) if so—the date so specified; or
    - (ii) if not—the date on which the Judgment becomes effective; and
  - (c) the following (as the case requires)—
    - (i) the amount of money that remains unpaid as at the date of the registration application;
    - (ii) the particulars of the act that remains unperformed as at the date of the registration application.

**10. Affidavits for registration applications: Mainland Judgments requiring sums of money or acts to be paid or performed in stages**

- (1) This rule applies if—
  - (a) either—
    - (i) a registration application is made in relation to a Mainland Judgment in a civil or commercial matter that requires the payment of a sum of money; or
    - (ii) a registration application is made in relation to a Mainland Judgment in a civil or commercial matter

that requires the performance of an act, and the requirement is not a prohibition, or a restriction, on the performance of an act;

- (b) the Judgment requires the sum of money or act to be paid or performed in stages; and
  - (c) the application relates to the sum of money or act.
- (2) The deponent of an affidavit in support of the application must also state in the affidavit, to the best of the deponent's information or belief—
- (a) the details of the property of the person against whom the judgment is enforceable under the law of the Mainland and the financial status of the person (as the case requires);
  - (b) for each stage, the date under the Judgment by which a sum of money or an act is required to be paid or performed, and the amount of money or the particulars of the act required to be paid or performed; and
  - (c) the following (as the case requires)—
    - (i) if a sum of money required to be paid in a stage has not been paid or fully paid—the stage and the amount of money that remains unpaid, as at the date of the registration application, in the stage;
    - (ii) if an act required to be performed in a stage has not been performed or fully performed—the stage and the particulars of the act that remains unperformed, as at the date of the registration application, in the stage.

**11. Affidavits for registration applications: Mainland Judgments given in absence of party at trial**

- (1) This rule applies to an affidavit in support of a registration application made in relation to a Mainland Judgment in a civil or commercial matter given in the absence of a party at the trial concerned.
- (2) The deponent must also state in the affidavit, to the best of the deponent's information or belief, any one or more of the following matters—
  - (a) that the absent party was summoned to appear in the original Mainland court according to the law of the Mainland;
  - (b) that the Judgment states that the absent party was so summoned;
  - (c) that the absent party is the applicant.
- (3) If the affidavit states only the matter mentioned in subrule (2)(a), the affidavit must also exhibit documents showing that the absent party was so summoned according to the law of the Mainland.

**12. Affidavits for registration applications: where Mainland Judgments were registered previously**

- (1) This rule applies if—
  - (a) a registration application (*current application*) is made in relation to a Mainland Judgment in a civil or commercial matter; and
  - (b) the Court has on a previous registration application made a registration order (*previous registration order*) for the registration of the Judgment or any part of the Judgment (*previous registered judgment*).

- (2) The deponent of an affidavit in support of the current application must also state in the affidavit, to the best of the deponent's information or belief—
  - (a) whether the registration of any previous registered judgment has been set aside under section 22 of the Ordinance;
  - (b) whether the current application is made in relation to any previous registered judgment the registration of which has been set aside under that section and, if so, the ground for setting aside the registration; and
  - (c) any other information relevant to the current application.
- (3) The affidavit must also exhibit a copy of—
  - (a) all previous registration orders; and
  - (b) all orders made under section 22 of the Ordinance for setting aside the registration of any previous registered judgment.

### **Division 3—Security for Costs**

#### **13. Security for costs**

The Court may order the applicant of a registration application made in relation to a Mainland Judgment in a civil or commercial matter to give security for the costs of—

- (a) the registration application; and
- (b) any setting aside application in relation to the registration of the Judgment.

## **Division 4—Registration**

### **14. Registration orders**

- (1) A registration order for the registration of a Mainland Judgment in a civil or commercial matter, or any part of such a Judgment, made on a registration application must be drawn up by or on behalf of the applicant.
- (2) The registration order must specify the period within which a setting aside application may be made in relation to the registration.
- (3) The registration order must contain a notification to the effect that the period mentioned in subrule (2) may be extended under section 20(2) of the Ordinance.
- (4) The registration order must also contain a notification to the effect that an action to enforce the Judgment or part may be taken only after the expiry of the period within which a setting aside application may be made or after such an application has been finally disposed of.
- (5) Except where the registration order is made on a registration application made by originating summons, the order is not required to be served on any other party to the original proceedings for the Judgment.

### **15. Register of registered judgments**

- (1) The Registrar of the High Court must keep in the Registry of that Court a register of registered judgments.
- (2) The register must contain the particulars of any execution issued on a registered judgment.

## 16. Notices of registration

- (1) If a registration order for the registration of a Mainland Judgment in a civil or commercial matter, or any part of such a Judgment, is made on a registration application, the applicant must serve a notice of registration (*the notice*) of the Judgment or part on all other parties to the original proceedings for the Judgment—
  - (a) by delivering it to those parties personally;
  - (b) by sending it to those parties at their usual or last known address; or
  - (c) in any other way directed by the Court.
- (2) Service of the notice out of jurisdiction is permissible without leave, and Order 11, rules 5, 5A, 6, 8 and 8A of the Rules of the High Court (Cap. 4 sub. leg. A) apply in relation to the notice as if the notice were a writ.
- (3) The notice must set out—
  - (a) the full particulars of the registration order and of the Judgment or part;
  - (b) the applicant's name and address for service, which may be the address of the applicant's solicitor or agent for the purpose;
  - (c) the right of a person against whom the Judgment or part may be enforced to apply under section 21 of the Ordinance to have the registration set aside; and
  - (d) the period within which a setting aside application may be made.
- (4) The notice must contain a notification to the effect that the period mentioned in subrule (3)(d) may be extended under section 20(2) of the Ordinance.

- (5) The notice must also contain a notification to the effect that an action to enforce the Judgment or part may be taken only after the expiry of the period within which a setting aside application may be made or after such an application has been finally disposed of.

## **Division 5—Setting Aside Registrations**

### **17. Setting aside applications**

- (1) A setting aside application in relation to the registration of a registered judgment, or any part of such a judgment, (***original registration***) must be made by summons supported by affidavit.
- (2) The Court may order any issue between the parties to be tried in any way in which an issue in an action may be ordered to be tried.
- (3) The Court may, either on its own initiative or on an application made by the person who made the registration application for the original registration, impose any terms (whether as to giving security or otherwise) the Court considers appropriate as a condition of the further conduct of the setting aside application if, having regard to all the circumstances of the case, the Court considers it just to do so.
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## **Part 3**

### **Execution of Registered Judgments**

**Note (with no legislative effect)—**

Section 27 of the Ordinance provides that an action to enforce a registered judgment may be taken only after the expiry of the period within which a setting aside application may be made or after such an application has been finally disposed of.

#### **18. Practice and procedure that apply to execution of registered judgments**

Except as provided by this Part, the practice and procedure under the Rules of the High Court (Cap. 4 sub. leg. A) apply, with necessary modifications, in relation to proceedings for the execution of a registered judgment.

#### **19. Issue of execution**

- (1) A person wishing to issue execution on a registered judgment must produce to the Registrar of the High Court—
  - (a) an affidavit of service of the notice of registration of the judgment under rule 16;
  - (b) an affidavit mentioned in subrule (2); and
  - (c) any order made by the Court in relation to the judgment.
- (2) The affidavit must state—
  - (a) the registered judgment in relation to which the person wishes to issue execution;
  - (b) that, to the best of the deponent's information or belief, as at the date of the affidavit—
    - (i) the judgment is still effective in the Mainland; and

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- (ii) the judgment has not been varied or revoked in the Mainland; and
  - (c) to the best of the deponent's information or belief, as at the date of the affidavit—
    - (i) that the judgment has not been complied with; and
    - (ii) whether any action has been taken to enforce the judgment further to what has been stated in the affidavit in support of the registration application and, if so, the details of the enforcement.
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## **Part 4**

### **Certified Copies of and Certificates for Hong Kong Judgments**

#### **20. Interpretation of Part 4**

In this Part—

**Registrar** (司法常務官)—

- (a) in relation to a Hong Kong Judgment given by the Court of Final Appeal—means the Registrar of the Court of Final Appeal;
- (b) in relation to a Hong Kong Judgment given by the Court of Appeal, Court of First Instance or Competition Tribunal—means the Registrar of the High Court;
- (c) in relation to a Hong Kong Judgment given by the District Court, Lands Tribunal or Small Claims Tribunal—means the Registrar of the District Court; and
- (d) in relation to a Hong Kong Judgment given by the Labour Tribunal—means the Registrar of the Labour Tribunal.

#### **21. Applications for certified copies of Hong Kong Judgments**

- (1) An application under section 33(1) of the Ordinance for a certified copy of a Hong Kong Judgment in a civil or commercial matter must be made ex parte on affidavit.
- (2) The affidavit must be filed with the Registrar.
- (3) The affidavit must—
  - (a) state the particulars of the original proceedings for the Judgment;

- (b) state that the Judgment is a Hong Kong Judgment in a civil or commercial matter and is effective in Hong Kong;
- (c) if the Judgment prohibits or restricts the performance of an act, state the following—
  - (i) whether there has been a non-compliance with the prohibition or restriction; and
  - (ii) the date on which the non-compliance first occurred;
- (d) if the Judgment requires the payment of a sum of money or the performance of an act (other than a sum of money or an act required to be paid or performed in stages), and the requirement is not a prohibition, or a restriction, on the performance of an act, state the following—
  - (i) the date under the Judgment by which the sum of money is to be paid, or the act is to be performed; and
  - (ii) the following (as the case requires)—
    - (A) the amount of money that remains unpaid as at the date of the application;
    - (B) the particulars of the act that remains unperformed as at the date of the application;
- (e) if the Judgment requires a sum of money or an act to be paid or performed in stages, and the requirement is not a prohibition, or a restriction, on the performance of an act, state the following—
  - (i) for each stage, the date under the Judgment by which a sum of money or an act is required to be paid or performed, and the amount of money or the particulars of the act required to be paid or performed; and
  - (ii) the following (as the case requires)—

- (A) if a sum of money required to be paid in a stage has not been paid or fully paid—the stage and the amount of money that remains unpaid, as at the date of the application, in the stage;
- (B) if an act required to be performed in a stage has not been performed or fully performed—the stage and the particulars of the act that remains unperformed, as at the date of the application, in the stage;
- (f) state whether, in the original proceedings for the Judgment, any objection was raised in respect of the exercise of jurisdiction over the case by the court or tribunal giving the Judgment and, if so, the grounds for the objection;
- (g) state whether any action has been taken to enforce the Judgment and, if so, the details of the enforcement;
- (h) state that the Judgment is not subject to any stay of execution;
- (i) state—
  - (i) that the time limit for appeal against the Judgment has expired or, if the time limit has not expired, the date on which it will expire; and
  - (ii) whether any notice of appeal against the Judgment has been entered; and
- (j) if applicable, state the rate at which the Judgment carries interest (if any).

## **22. Certified copies of Hong Kong Judgments**

- (1) This rule applies if, on an application mentioned in rule 21, a court or tribunal issues a certified copy under section 34(1) of

the Ordinance in respect of a Hong Kong Judgment in a civil or commercial matter.

- (2) The certified copy must—
  - (a) be an office copy sealed with the seal of—
    - (i) for a Hong Kong Judgment given by the Court of Appeal or Court of First Instance—the High Court; or
    - (ii) for a Hong Kong Judgment given by any other court or tribunal—the court or tribunal by which the Judgment was given; and
  - (b) be endorsed with a certificate signed by the Registrar certifying that the copy is—
    - (i) a true copy of a Hong Kong Judgment obtained in the court or tribunal by which the Judgment was given; and
    - (ii) issued under section 34(1) of the Ordinance.

## **23. Certificates for Hong Kong Judgments**

- (1) This rule applies if, on an application mentioned in rule 21, a court or tribunal issues a certificate under section 34(2) of the Ordinance in respect of a Hong Kong Judgment in a civil or commercial matter.
- (2) The following documents must be annexed to the certificate—
  - (a) a copy of the writ, originating summons or other process by which the case were begun (*originating process*); and
  - (b) a copy of the sealed reasoned Judgment (if any).
- (3) The certificate must state—
  - (a) that the Judgment is a Hong Kong Judgment in a civil or commercial matter and is effective in Hong Kong;

- (b) what pleadings, if any, were served;
- (c) either—
  - (i) the way in which the originating process was served on the other party or parties to the original proceedings for the Judgment; or
  - (ii) that the other party or all other parties acknowledged service of the originating process;
- (d) if the Judgment prohibits or restricts the performance of an act, state the following—
  - (i) whether there has been a non-compliance with the prohibition or restriction; and
  - (ii) the date on which the non-compliance first occurred;
- (e) if the Judgment requires the payment of a sum of money or the performance of an act (other than a sum of money or an act required to be paid or performed in stages), and the requirement is not a prohibition, or a restriction, on the performance of an act—the amount of money that remains unpaid, or the particulars of the act that remains unperformed, as at the date of the application, as stated in an affidavit made in compliance with rule 21(3)(d);
- (f) if the Judgment requires a sum of money or an act to be paid or performed in stages, and the requirement is not a prohibition, or a restriction, on the performance of an act—the amount of money that remains unpaid, or the particulars of the act that remains unperformed, in each stage as at the date of the application, as stated in an affidavit made in compliance with rule 21(3)(e);
- (g) if, in the original proceedings for the Judgment, an objection was raised in respect of the exercise of

- jurisdiction over the case by the court or tribunal giving the Judgment—the grounds for the objection;
- (h) the date beginning on which the Judgment takes effect;
  - (i) whether any action has been taken to enforce the Judgment and, if so, the details of the enforcement;
  - (j) that the time limit for appeal against the Judgment has expired or, if the time limit has not expired, the date on which it will expire;
  - (k) whether any notice of appeal against the Judgment has been entered;
  - (l) the rate at which the Judgment carries interest (if any); and
  - (m) any other particulars that may be necessary to give to the court in the Mainland in which it is sought to obtain execution of the Judgment.
- (4) The certificate must—
- (a) be signed by the Registrar; and
  - (b) be sealed with the seal of—
    - (i) for a Hong Kong Judgment given by the Court of Appeal or Court of First Instance—the High Court; or
    - (ii) for a Hong Kong Judgment given by any other court or tribunal—the court or tribunal by which the Judgment was given.
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## **Part 5**

### **Fees**

#### **24. Interpretation of Part 5**

In this Part—

*application document* (申請文件), in relation to an application specified in column 2 of the Schedule, means a document prepared for the purpose of the application.

#### **25. Fees prescribed for purposes of Ordinance**

The fee prescribed for an application specified in column 2 of the Schedule is the amount specified in column 3 of that Schedule opposite the application.

#### **26. Method of payment of fees**

The fee prescribed for an application specified in column 2 of the Schedule must be paid—

- (a) by means of an adhesive stamp; or
- (b) by causing the application document to be franked with the amount paid.

#### **27. Reduction etc. of fees**

- (1) The Registrar may reduce, remit or defer payment of a fee paid or payable for an application specified in column 2 of the Schedule as the Registrar considers appropriate in a particular case.
- (2) If the Registrar reduces, remits or defers payment of a fee under subrule (1), the Registrar must endorse on the application

document a note of the reduction, remission or deferment and the reason for doing so.

(3) In this rule—

**Registrar** (司法常務官)—

- (a) in relation to a registration application—means the Registrar of the High Court; and
  - (b) in relation to an application under section 33(1) of the Ordinance for a certified copy of a Hong Kong Judgment—has the meaning given by rule 20.
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Schedule

[rr. 24, 25, 26 & 27]

Fees

| Column 1 | Column 2   | Column 3 |
|----------|--|----------|
| Item     | Application  | Amount   |
| 1.       | A registration application   | \$1,045  |
| 2.       | An application under section 33(1) of the Ordinance for a certified copy of a Hong Kong Judgment | \$125    |

Chief Judge