

Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region

(“Arrangement”)

The Arrangement seeks to establish a more comprehensive mechanism for reciprocal recognition and enforcement of judgments in civil and commercial matters between Hong Kong and the Mainland. The key features of the Arrangement are set out below.

A. Scope

2. The Arrangement covers matters which are considered to be of a “civil and commercial” nature under both Hong Kong and Mainland law. Non-judicial proceedings and judicial proceedings relating to administrative or regulatory matters would be excluded¹.

B. Specific types of matters to be covered or excluded

Corporate insolvency and debt restructuring as well as personal bankruptcy

3. The Arrangement does not cover judgments on corporate insolvency and debt restructuring as well as personal insolvency².

Succession of the estate of a deceased person and other related matters

4. The Arrangement excludes matters in relation to the succession, administration or distribution of the estate of a deceased person³.

¹ Article 2 of the Arrangement. By way of non-exhaustive examples, the following matters are excluded from the Arrangement: (a) judicial review cases; (b) cases brought by the Securities and Futures Commission under section 214 of the Securities and Futures Ordinance (Cap. 571); (c) appeals before the Court of Appeal under sections 266 and 267 of the Securities and Futures Ordinance; (d) appeals before the Court of First Instance under section 84 of the Trade Marks Ordinance (Cap. 559); and (e) applications brought by the Competition Commission before the Competition Tribunal under section 92 of the Competition Ordinance (Cap. 619). However, follow-on actions brought before the Competition Tribunal under section 110 of the Competition Ordinance by a person who has suffered loss or damage as a result of any act that has been determined to be a contravention of a conduct rule are covered by the Arrangement.

² Article 3(1)(5) of the Arrangement.

³ Article 3(1)(2) of the Arrangement.

Matrimonial or family matters not covered by the Matrimonial Arrangement

5. Judgments in matrimonial or family matters already covered by the Matrimonial Arrangement will be governed by the Matrimonial Arrangement and the Arrangement does not apply to those matters⁴.

6. Moreover, decrees of judicial separation made by Hong Kong courts and the following types of disputes categorised in the Mainland as matrimonial or family related⁵ are also excluded from the Arrangement⁶:

- (a) disputes on maintenance arising out of a legal obligation of a son/daughter to support his/her parent(s) or a grandchild to support his/her grandparent(s);
- (b) disputes on maintenance between siblings;
- (c) disputes on dissolution of an adoptive relationship;
- (d) disputes on guardianship rights over adults;
- (e) disputes after divorce on liability for damages; and
- (f) disputes on division of property arising from a co-habitation relationship.

7. Be that as it may, the following two types of disputes categorised in the Mainland as matrimonial or family disputes and excluded from the Matrimonial Arrangement may arise in Hong Kong as disputes of general “civil and commercial” nature. They are therefore covered by the Arrangement:

- (a) disputes between family members on division of property⁷; and
- (b) disputes on property arising from engagement agreements⁸.

⁴ Article 31 of the Arrangement.

⁵ These types of disputes are excluded from the Matrimonial Arrangement.

⁶ Article 3(1)(1) of the Arrangement.

⁷ Such disputes are described as “分家析產糾紛” under Mainland law.

⁸ Such disputes are described as “婚約財產糾紛” under Mainland law.

Intellectual property rights

8. The Arrangement covers judgments involving intellectual property rights. It provides for a definition for “intellectual property rights”⁹ mirroring the types of such rights provided for under Article 1(2) of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* with an additional reference to the plant variety rights provided under Hong Kong’s Plant Varieties Protection Ordinance (Cap. 490) and Article 123(2)(7) of the General Provisions of the Civil Law of the People’s Republic of China (中華人民共和國民法總則) as the case may be.

9. The specific scope of judgments involving intellectual property rights covered or excluded (as the case may be) by the Arrangement are as follows¹⁰:

- (a) judgments ruling on contractual disputes involving intellectual property rights are covered;
- (b) judgments ruling on tortious claims for infringement of intellectual property rights are covered, except for infringement of invention patents and utility models in the Mainland and infringement of standard patents (including “original grant” patents) and short-term patents in Hong Kong;
- (c) judgments ruling on the licence fee rate of standard essential patents in both the Mainland and Hong Kong are excluded;
- (d) judgments ruling on intellectual property rights which are not within the definition of “intellectual property rights” set out under paragraph 8 above are excluded;
- (e) a ruling on the validity, establishment or subsistence of intellectual property rights is not recognised or enforced under the Arrangement; and
- (f) notwithstanding sub-paragraph (e) immediately above, a judgment on liability based on a ruling on the validity, establishment or subsistence of intellectual property rights as a preliminary issue

⁹ Article 5 of the Arrangement.

¹⁰ Articles 3(1)(3) and 15 of the Arrangement.

shall still be recognised and enforced under the Arrangement, provided the requirements under the Arrangement are satisfied.

Maritime matters

10. Judgments on marine pollution, limitation of liability of maritime claims, general average, emergency towage and salvage, maritime liens and carriage of passengers by sea are excluded from the Arrangement¹¹.

Arbitration matters

11. Judgments on the validity of an arbitration agreement and the setting aside of an arbitral award are excluded from the Arrangement¹². The Arbitration Arrangement¹³ continues to be relevant to these matters.

Other matters

12. The following matters are excluded from the Arrangement¹⁴:

- (a) judgments ruling on a natural person's qualification as a voter;
- (b) judgments declaring the disappearance or death of a natural person;
- (c) judgments ruling on the legal incapacity of a natural person for civil acts; and
- (d) judgments ruling on the recognition and enforcement of judgments and arbitral awards made by other countries or places.

Findings on preliminary issues

13. The Arrangement includes a provision to the effect that the requested court shall not refuse recognition and enforcement under the Arrangement solely

¹¹ Article 3(1)(4) of the Arrangement.

¹² Article 3(1)(7) of the Arrangement.

¹³ The full title of the **Arbitration Arrangement** signed in 1999 and which took effect in February 2000 is “關於內地與香港特別行政區相互執行仲裁裁決的安排” and the title translated to English is “Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region”.

¹⁴ Articles 3(1)(6) and 3(1)(8) of the Arrangement.

for the reason that the judgment is based on a ruling on a preliminary issue on a matter outside the scope of the Arrangement¹⁵.

C. Principle of enforceability and level of courts to be covered

14. In relation to the Mainland, legally enforceable Mainland judgments given by the Primary People's Courts or above in the following circumstances are covered by the Arrangement¹⁶:

- (a) any judgment of the second instance;
- (b) any judgment of the first instance from which no appeal is allowed, or the time limit for an appeal has expired and no such appeal has been filed; and
- (c) any judgment of (a) or (b) above made in accordance with the procedure for trial supervision.

15. In respect of Hong Kong, legally enforceable Hong Kong judgments given by the following courts are covered by the Arrangement¹⁷:

- (a) the Court of Final Appeal;
- (b) the Court of Appeal and the Court of First Instance of the High Court;
- (c) the District Court;
- (d) the Labour Tribunal;
- (e) the Lands Tribunal;
- (f) the Small Claims Tribunal; and

¹⁵ Article 14 of the Arrangement. For instance, if the requesting court, having decided whether a natural person had the legal capacity to enter into a contract, proceeded to make a judgment on the contractual liability of that person, the requested court should not refuse to recognise and enforce the judgment on contractual liability simply because the ruling by the requesting court on the issue of legal capacity would fall outside the scope of the Arrangement.

¹⁶ Article 4(2)(1) of the Arrangement.

¹⁷ Article 4(2)(2) of the Arrangement.

(g) the Competition Tribunal.

16. The term “judgment” in the Arrangement includes¹⁸:

- (a) in the case of the Mainland, any judgment, ruling, conciliatory statement and order of payment, but excludes ruling on preservation measures; and
- (b) in the case of Hong Kong, includes any judgment, order, decree and allocator, but excludes anti-suit injunction and interim relief.

D. Jurisdictional Basis

17. Subject to the relevant dispute not being under the exclusive jurisdiction of the courts of the requested place, the requesting court shall be considered to have jurisdiction for the purpose of the Arrangement if one of the following conditions is satisfied¹⁹:

- (a) at the time the requesting court accepted the case, the defendant’s “place of residence”²⁰ was in the requesting place;
- (b) at the time the requesting court accepted the case, the defendant maintained a representative office, branch, office, place of business or other establishment without separate legal personality at the requesting place, and the claim on which the judgment is based arose out of the activities of that establishment;
- (c) the proceeding was brought on a contractual dispute and the place of performance of the contract is in the requesting place;
- (d) the proceeding was brought on a tortious dispute and the act of infringement was committed in the requesting place;
- (e) the parties to a contractual dispute or other disputes related to

¹⁸ Article 4(1) of the Arrangement.

¹⁹ Article 11(1) of the Arrangement.

²⁰ The term “place of residence” is defined in Article 6 of the Arrangement and discussed in paragraph 19 of this paper.

interests in property had expressly agreed in writing that the courts of the requesting place shall have jurisdiction over the relevant proceedings, and where the “place of residence” of all the parties to the judgment was at the requested place, the requesting place was the place where the contract was performed or signed, where the subject matter was situated etc., being a place which has an actual connection with the dispute; or

- (f) the parties did not raise any objection as to the jurisdiction of the requesting court and participated in the proceedings in defence or reply, and where the “place of residence” of all the parties to the judgment was at the requested place, the requesting place was the place where the contract was performed or signed, where the subject matter was situated etc., being a place which has an actual connection with the dispute.

18. Apart from the provisions specified in the preceding paragraph, where the requested court considers that the requesting court had jurisdiction over the dispute according to the law of the requested place, the requested court may also determine that the requesting court has jurisdiction over the dispute²¹.

19. The term “place of residence” is defined to mean in relation to a natural person, one’s household residence, permanent residence or habitual residence; and in relation to a legal person, its place of incorporation or registration, place of principal office, principal place of business or place of central management²².

Judgments on intellectual property rights

20. The jurisdictional grounds set out in paragraph 17 above are not applicable to a judgment ruling on a tortious claim for an infringement of an intellectual property right²³. For such a judgment, the requesting court shall be considered to have jurisdiction only if the act of infringement²⁴ of intellectual property right was committed in the requesting place and the intellectual property

²¹ Article 11(4) of the Arrangement.

²² Article 6 of the Arrangement.

²³ Including acts of unfair competition prohibited under Article 6 of the Anti-Unfair Competition Law of the People’s Republic of China (中華人民共和國反不正當競爭法) (Article 6 relates to acts of confusion causing one’s products to be mistaken for the products of another or as having specific connection with another) as well as claims for passing off under Hong Kong law.

²⁴ *Ibid.*

right or interest concerned is subject to protection under the law of the requesting place²⁵.

21. On the other hand, judgments ruling on a contractual claim relating to an intellectual property right will still be subject to the jurisdictional grounds set out in paragraph 17 above.

E. Grounds for refusal

22. The Arrangement provides the following mandatory grounds for refusal in respect of an application for recognition and enforcement of a relevant judgment²⁶:

- (a) the judgment does not meet the jurisdictional requirement(s) as set out under paragraphs 17 to 21 above (as the case may be);
- (b) the respondent was not summoned in accordance with the law of the requesting place, or although the respondent was duly summoned, was not given a reasonable opportunity to make representations or defend his/her case;
- (c) the judgment was obtained by fraud;
- (d) the judgment was rendered in a cause of action which was accepted by the requesting court after a court of the requested place has already accepted the cause of action on the same dispute;
- (e) a court of the requested place has rendered a judgment on the same cause of action, or has recognised a judgment on the same cause of action given by a court of another country or place;
- (f) an arbitral award was already given in the requested place on the same cause of action, or a court of the requested place has recognised an arbitral award on the same cause of action given in another country or place; or

²⁵ Article 11(3) of the Arrangement.

²⁶ Article 12 of the Arrangement.

- (g) the requested Mainland court considers that the recognition and enforcement of the judgment is manifestly contrary to the basic legal principles of Mainland law or the social and public interests of the Mainland; or the requested Hong Kong court considers that the recognition and enforcement of the judgment is manifestly contrary to the basic legal principles of Hong Kong law or the public policy of Hong Kong.

23. The Arrangement also provides a discretionary ground for refusal in respect of an application for recognition and enforcement of a relevant judgment where the proceedings in the court of the requesting place were contrary to a valid arbitration agreement or a valid agreement designating a court (not being a court of the requesting place) as having jurisdiction for resolving the same cause of action²⁷.

F. Types of relief

24. Subject to paragraph 25 below, the Arrangement covers both monetary (excluding exemplary or punitive damages) and non-monetary relief.

25. In respect of judgments ruling on tortious claims for infringement of intellectual property rights²⁸, the Arrangement only covers monetary relief (but including exemplary or punitive damages) determined with reference to the infringing act committed in the requesting place²⁹, but judgments ruling on tortious claims for infringement of trade secrets will additionally cover non-monetary relief³⁰.

G. Relationship with the Choice of Court Arrangement

26. The Arrangement will, upon its commencement, supersede the Choice of Court Arrangement. This is except for a “choice of court agreement”³¹ made

²⁷ Article 13 of the Arrangement.

²⁸ Including acts of unfair competition prohibited under Article 6 of the Anti-Unfair Competition Law of the People’s Republic of China (中華人民共和國反不正當競爭法) (Article 6 relates to acts of confusion causing one’s products to be mistaken for the products of another or mistaken as having specific connection with another) as well as claims for passing off under Hong Kong law.

²⁹ Article 17(1) of the Arrangement.

³⁰ Article 17(2) of the Arrangement.

³¹ A “choice of court agreement” is defined in the Choice of Court Arrangement to mean “*any agreement in written form made, as from the day of commencement of this Arrangement, by the parties concerned in which a people’s court of the Mainland or a court of the Hong Kong Special Administrative Region is*

between the parties before the commencement of the Arrangement and, in which case, the Choice of Court Arrangement will continue to apply³².

H. Procedural matters

27. The Arrangement provides that the time limits, procedures and means for a party to apply for recognition and enforcement of a judgment shall be governed by the law of the requested place³³.

28. The Arrangement allows simultaneous applications for enforcement in both Hong Kong and the Mainland if the assets of the party against whom enforcement is sought are situated in both Hong Kong and the Mainland³⁴. The total amount recovered, however, shall not exceed the sum specified in the relevant judgment.

I. Implementation

29. The Arrangement will only take effect on a date to be announced by the two sides, after both places have completed the necessary procedures to enable implementation and will apply to judgments made on or after the commencement date of the Arrangement³⁵.

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expressly designated as the court having sole jurisdiction for resolving any dispute which has arisen or may arise in respect of a particular legal relationship”.

³² Article 30 of the Arrangement.

³³ Article 10 of the Arrangement.

³⁴ Article 21 of the Arrangement.

³⁵ Article 29 of the Arrangement.