

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

Main provisions of the Ordinance

The Ordinance seeks to give effect to the “*Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region*” (“**Arrangement**”) signed between the Government of the Hong Kong Special Administrative Region and the Supreme People’s Court on 20 June 2017.

2. Under section 1(2) of the Ordinance, the Secretary for Justice, by notice published in the Gazette, appointed **15 February 2022** as the day on which the Ordinance comes into operation. The Arrangement and the Ordinance come into operation on the same day.

3. The Ordinance establishes mechanisms in respect of the following matters:

- (a) Registration of **specified orders in Mainland judgments given in matrimonial or family cases** under Part 2 of the Ordinance. Part 2 applies to Mainland Judgments given in matrimonial or family cases on or after 15 February 2022.
- (b) Recognition of **Mainland divorce certificates** under Part 3 of the Ordinance. Part 3 applies to Mainland divorce certificates issued on or after 15 February 2022.
- (c) Application for certified copy of and certificate for **Hong Kong judgments given in matrimonial or family cases** under Part 4 of the Ordinance. Part 4 applies to Hong Kong Judgments given in matrimonial or family cases on or after 15 February 2022.

4. For details on the practice and procedure relating to applications under

the Ordinance and the execution of registered orders, the fees payable under the Ordinance, etc., please refer to the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Rules (Cap. 639A).

(A) Recognition and enforcement of Mainland judgments

5. Divisions 1 and 2 of Part 2 of the Ordinance (sections 7 to 13) provide for the registration of specified orders in a Mainland judgment given in a matrimonial or family case that is effective in the Mainland. Schedule 2 to the Ordinance sets out three types of specified orders:

- (a) **Care-related orders**, such as orders relating to custody and guardianship as set out in Part 1 of Schedule 2¹.
- (b) **Status-related orders**, such as an order granting divorce² and an order for the annulment of a marriage as set out in Part 2 of Schedule 2³.
- (c) **Maintenance-related orders**, such as orders relating to maintenance (including spousal maintenance) and division of property between parties to a marriage as set out in Part 3 of Schedule 2⁴.

¹ As set out in Part 1 of Schedule 2 to the Ordinance, care-related orders are as follows:

- 1. An order in relation to the custody of a person under the age of 18 years;
- 2. An order in relation to the custody of a person aged 18 years or above who cannot live independently;
- 3. An order in relation to the guardianship of a person under the age of 18 years;
- 4. An order for right of access in relation to a person under the age of 18 years; and
- 5. An order for the protection of a person from violence in a domestic relationship.

² According to section 61A of the Matrimonial Causes Ordinance (Cap.179), the recognition mechanism under Part IX of that Ordinance does not apply to divorces obtained by means of judicial or other proceedings in the Mainland on or after 15 February 2022. Application for recognition of an order granting divorce in a relevant Mainland judgment or of a relevant divorce certificate shall be made pursuant to the Ordinance.

³ As set out in Part 2 of Schedule 2 to the Ordinance, status-related orders are as follows:

- 1. An order granting a divorce;
- 2. An order declaring that a marriage is invalid;
- 3. An order for the annulment of a marriage; and
- 4. An order in relation to the parentage of a person.

Adoptions in the Mainland will continue to be given legal effect in Hong Kong pursuant to section 17 of the Adoption Ordinance (Cap. 290).

⁴ As set out in Part 3 of Schedule 2 to the Ordinance, maintenance-related orders are as follows:

6. A party to a Mainland judgment given in a matrimonial or family case may make a **registration application**, accompanied by the prescribed fee, to the District Court (Family Court) for one or more specified order(s) in the Mainland judgment to be registered, if the judgment is given **on or after 15 February 2022** and effective in the Mainland. For this purpose, a Mainland judgment is presumed, until the contrary is proved, to be given in a matrimonial or family case and effective in the Mainland if a certificate certifying those matters is issued by the original Mainland court.

7. Registration application in respect of a **status-related order** or a **care-related order** may be made by a party at any time after the relevant Mainland judgment has become effective, whereas registration application in respect of a **maintenance-related order** may be made only if a payment required to be made or an act required to be performed has not been made or performed after the due date. Further, registration application in respect of a **care-related order** or a **maintenance-related order** shall generally be made no later than within **2 years** after the breach of such order or after the judgment has become effective, as the case may be⁵. To cater for contingencies, the court has discretion to give permission for an application to be made even though the two-year time limit has passed⁶.

8. If the court is satisfied that the relevant requirements for registration are

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1. An order in relation to the maintenance of a person under the age of 18 years;
 2. An order in relation to the maintenance of a person aged 18 years or above who cannot live independently;
 3. An order in relation to spousal maintenance; and
 4. An order for the division of property between parties to a marriage (including parties to a marriage which has been declared invalid or annulled), and includes—
 - (a) an order—
 - (i) for the delivery or transfer of property to one party to the marriage;
 - (ii) for the payment of a sum of money to one party to the marriage; or
 - (iii) for the vesting of property in one party to the marriage; or
 - (b) a declaration that property belongs to one party to the marriage.

⁵ The two-year time limit seeks to reflect the fact that the enforcement of a Mainland judgment in the Mainland is generally subject to a two-year time limit under Mainland law and the Mainland side would likely impose the same time limit in relation to an application made under the Arrangement for the enforcement in the Mainland of Hong Kong judgments.

⁶ This will allow the Hong Kong court to exercise its discretion in appropriate cases where, for example, at the time when the breach of a care-related order took place, the child in question was not present in Hong Kong or the whereabouts of the child were unknown, and the child only moved to Hong Kong or was discovered to be in Hong Kong more than two years after the breach.

met, it may order the specified order to be **registered**. In relation to a **maintenance-related order**, it may be registered only to the extent that it relates to such payment or act that is required to be made or performed but has not been made or performed. As for a maintenance-related order which requires a payment or an act to be made or performed **periodically** (“**periodic order**”), when the court registers such order, the registration may cover not only those payments or acts that are required to be made or performed **before** the application date, but also those that are required to be made or performed **on or after** the application date, provided that the relevant payments or acts have not yet been made or performed. In other words, in case of further defaults of the periodic order in future, a party does not need to apply for registration again but may directly apply to the court for execution of each periodic payment or act upon default.

9. Divisions 3 and 4 of Part 2 of the Ordinance set out the procedure for **setting aside**⁷ the registration (Division 3, namely sections 14 to 18) and the **effect of registration** (Division 4, namely sections 19 to 25). A registered **care-related order** or a registered **maintenance-related order** may be enforced in Hong Kong as if it were originally made by the registering court on the day of registration, but an action to enforce such orders may be taken only after the expiry of the period within which an application may be made to set aside the registration of the order, or after the setting aside application has been finally disposed of, as the case may be. Similarly, a registered **status-related order** is recognized as valid in Hong Kong after the period for applying to set aside the registration of the order has expired, or after the setting aside application has been finally disposed of, as the case may be.

10. Division 5 of Part 2 of the Ordinance (sections 26 to 28) seeks to restrict and minimise parallel proceedings in Hong Kong for the same cause of action

⁷ The grounds on which the registration of a specified order must be set aside are set out under section 16 of the Ordinance. Examples of such grounds include, where the respondent to the Mainland judgment was not summoned to appear or summoned to appear but not given a reasonable opportunity to make submissions or defend the proceedings; where the Mainland judgment was obtained by fraud; where proceedings were started in a court in Hong Kong or judgment was given by a court in Hong Kong in respect of the same cause of action between the same parties; where the recognition or enforcement of the specified order is manifestly contrary to the public policy of Hong Kong, etc. The party applying for setting aside should bear the burden of proof.

between the same parties by providing for proceedings pending before a Hong Kong court to be stayed, and by prohibiting the commencement of new proceedings in Hong Kong, pending final disposal of a registration application (or an application to set aside the registration, as the case may be).

11. To avoid doubt, sections 26(7) and 27(4) state that the cause of action of the two sets of proceedings would **not** be regarded as the same if the circumstances giving rise to the proceedings that are pending in Hong Kong or intended to be brought in Hong Kong (as the case may be) are **materially different** from those giving rise to the cause of action for which the Mainland judgment was given. In addition, to provide for contingencies that may arise when the proceedings that are pending in Hong Kong are stayed, the court has discretion under section 26(5) to make orders for the purposes of maintaining or restoring the status quo, ensuring the welfare and best interests of a person under the age of 18 years or preventing an irremediable injustice. Besides, proceedings under Part IIA (Financial Relief in Hong Kong after Divorce, etc. Outside Hong Kong) of the Matrimonial Proceedings and Property Ordinance (Cap. 192) are exempted from the restrictions on parallel proceedings under this Division.

(B) Recognition of Mainland divorce certificates

12. Part 3 of the Ordinance (sections 29 to 36) provides for recognition of Mainland divorce certificates issued by the civil affairs departments in the Mainland. A party to a divorce specified in a Mainland divorce certificate issued on or after 15 February 2022⁸ may make an application, accompanied by the prescribed fee, to the District Court (Family Court) for recognition of the divorce certificate. Similar to Mainland judgments, the Mainland divorce certificate will be recognized as valid in Hong Kong after the period for applying to set aside⁹ the recognition has expired, or after the setting aside application has

⁸ As mentioned in footnote 2 above, application for recognition of a Mainland divorce certificate issued on or after 15 February 2022 shall be made pursuant to the Ordinance.

⁹ The grounds for setting aside the recognition of a Mainland divorce certificate are set out under section 33 of the Ordinance. The party applying for setting aside should bear the burden of proof.

been finally disposed of, as the case may be¹⁰.

(C) Certification of Hong Kong judgments for purposes of recognition and enforcement in the Mainland

13. Part 4 of the Ordinance (sections 37 to 39) seeks to facilitate a party in seeking the recognition and enforcement by a Mainland court, pursuant to the Arrangement, of a Hong Kong judgment given in a matrimonial or family case. A party to a Hong Kong judgment in a matrimonial or family case that is given on or after 15 February 2022 and effective in Hong Kong may apply, accompanied by the prescribed fee, to the Registrar of the relevant Hong Kong court which gave the judgment for a certified copy of the Hong Kong judgment. The certified copy of the Hong Kong judgment would also be accompanied by a certificate issued by the Registrar of the relevant Hong Kong court certifying that the Hong Kong judgment is given in a matrimonial or family case and is effective in Hong Kong.

14. The relevant orders made by the Hong Kong courts in matrimonial or family cases are set out in Schedule 3 to the Ordinance¹¹, reflecting Article 3(1)(2)

¹⁰ According to Schedule 4 to the Ordinance, the recognition mechanism under Part IX of the Matrimonial Causes Ordinance (Cap. 179) will no longer apply to divorces in the Mainland. Applications for recognition of an order granting a divorce in a Mainland judgment or a Mainland divorce certificate shall be made pursuant to the mechanisms established under the Ordinance.

¹¹ For the purposes of the Ordinance, orders that may be made in matrimonial or family cases in Hong Kong are as follows:

1. A decree absolute of divorce granted under Part III of the Matrimonial Causes Ordinance (Cap. 179);
2. A decree absolute of nullity granted under Part IV of the Matrimonial Causes Ordinance (Cap. 179);
3. An order under the Matrimonial Proceedings and Property Ordinance (Cap. 192) for maintenance pending the determination of a suit;
4. A maintenance order made under—
 - (a) the Guardianship of Minors Ordinance (Cap. 13);
 - (b) the Separation and Maintenance Orders Ordinance (Cap. 16); or
 - (c) Part II or IIA of the Matrimonial Proceedings and Property Ordinance (Cap. 192);
5. An order for the transfer or sale of property made under—
 - (a) the Guardianship of Minors Ordinance (Cap. 13); or
 - (b) Part II or IIA of the Matrimonial Proceedings and Property Ordinance (Cap. 192);
6. An order made under the Married Persons Status Ordinance (Cap. 182) with respect to property;
7. An order made under the Matrimonial Proceedings and Property Ordinance (Cap. 192) for the alteration of a maintenance agreement during the lives of the parties;
8. An adoption order made under the Adoption Ordinance (Cap. 290);
9. A declaration regarding the legitimacy of a person, or for the legitimization of a person made under the Matrimonial Causes Ordinance (Cap. 179);

of the Arrangement. To avoid doubt, the Explanatory Memorandum to the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill¹² makes clear that the phrase “an order in relation to custody” mentioned in item 11 (orders which may be made by the relevant court under relevant enactments) and item 12 (orders which may be made by the relevant court in the exercise of its wardship jurisdiction) of Schedule 3 can cover an order relating to access to a child or an order for the return or delivery of a child who has been wrongfully removed from Hong Kong to the Mainland or wrongfully retained in the Mainland (other than in the context of an international child abduction case).

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10. A declaration regarding the parentage or the legitimacy of a person, or a declaration for the legitimization of a person, made under the Parent and Child Ordinance (Cap. 429);
 11. An order in relation to custody made under—
 - (a) the Guardianship of Minors Ordinance (Cap. 13);
 - (b) the Separation and Maintenance Orders Ordinance (Cap. 16); or
 - (c) the Matrimonial Proceedings and Property Ordinance (Cap. 192);
 12. An order in relation to custody made in respect of a person under the age of 18 years who has been made a ward of court;
 13. An injunction granted under the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189);
 14. An order made under the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189) for varying or suspending the execution of a custody or access order.

¹² The Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill can be accessed at <https://www.gld.gov.hk/egazette/pdf/20202448/es3202024489.pdf>.