

## **Key Features of 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 (“the Arrangement”)**

The Arrangement covers the reciprocal recognition and enforcement of civil judgments in matrimonial and family cases by the courts of Hong Kong and the Mainland. The key features of the Arrangement are set out below.

### **(a) Scope**

2. The Arrangement covers the following types of judgments on matrimonial and family matters made by Hong Kong courts -

- (i) decrees absolute of divorce;
- (ii) decrees absolute of nullity;
- (iii) orders for maintenance pending suit;
- (iv) maintenance orders, including orders for periodical payments and payment of a lump sum;
- (v) orders for transfer of property and sale of property in matrimonial proceedings;
- (vi) orders as to property made under the Married Persons Status Ordinance (Cap.182);
- (vii) orders made during the lives of parties for alteration of maintenance agreements;
- (viii) maintenance orders (including orders for periodical payments and payment of a lump sum), and orders for transfer of property and sale of property granted pursuant to applications made after divorce outside Hong Kong ;
- (ix) adoption orders;
- (x) declarations of parentage, legitimacy or legitimation;
- (xi) custody orders, including orders regarding access to a child;
- (xii) custody orders made with respect to a child who has been made a ward of court;
- (xiii) non-molestation orders, ouster orders, re-entry orders and variation or suspension of custody orders and access orders made in the context of

domestic and cohabitation relationships violence.

3. As regards the judgments on matrimonial and family matters made by the Mainland courts, the Arrangement covers -

- (i) division of the property of parties to a marriage during the subsistence of the marriage;
- (ii) dissolution of a marriage (which may also involve issues on division of property and custody);
- (iii) disputes on (1) the division of property not divided at the time of the divorce; (2) the division of property discovered after divorce; or (3) the performance of an agreement made during or at the time of the divorce on the division of property;
- (iv) validity of a marriage;
- (v) annulment of a marriage;
- (vi) disputes on an agreement made by the parties to a marriage (including one made prior to the marriage) on maintenance and the division of property including during the subsistence of the marriage;
- (vii) disputes on custody of a child between cohabitantes;
- (viii) determination of parentage;
- (ix) disputes on custody of a child;
- (x) disputes on the duty to maintain the other party to a marriage;
- (xi) order for adoption of a child;
- (xii) disputes relating to guardianship of parents over a child;
- (xiii) disputes on the rights of access to a child;
- (xiv) protection orders in situations of domestic violence.

**(b) Divorce certificates under administrative procedures**

4. In addition, a “divorce certificate” obtained through registration with a Mainland administrative authority in the Mainland, which has the same legal effect as a divorce order granted by a Mainland court, is covered by the Arrangement. On the Hong Kong side, an agreement or memorandum of dissolution of customary marriages or modern marriages under Part V of the Marriage Reform Ordinance (Cap.178) and an agreement or memorandum of dissolution of certain marriages celebrated in the Mainland under Part VA of Cap.178 are included in the Arrangement.

### **(c) Property Adjustment**

5. The Arrangement covers orders *in personam* for transfer of property and orders for sale.

6. Noting that the concept of property ownership in a marriage under Mainland law is different from that under Hong Kong law, the Arrangement includes a provision to the effect that a Mainland judgment ordering that a property be vested in one party to the marriage will be deemed to mean, for the purpose of enforcement in Hong Kong, an order for transfer of the property to that party.

### **(d) Power of variation of maintenance orders**

7. The Arrangement does not include a power on the part of the requested court to vary maintenance orders made by the original court.

### **(e) Safeguards**

8. The Arrangement provides for the following grounds of refusal in respect of an application for recognition and enforcement of a relevant judgment -

- (i) the respondent had not been summoned according to the law of the original court, or had not been given a reasonable opportunity to make submissions or argue his/her case, even if he/she was summoned according to the law of the original court;
- (ii) the judgment was obtained by fraud;
- (iii) the judgment was rendered in a cause of action which was accepted by the original court after the requested court has already accepted the cause of action on the same dispute;
- (iv) the requested court has rendered a judgment on the same dispute, or a foreign court has already rendered judgment on the same dispute and that judgment has been recognised or enforced by the requested court;
- (v) the 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 Hong Kong court considers that the recognition and enforcement of the judgment is contrary to the basic legal principles of Hong Kong law or the public policy of Hong Kong.

9. In addition, if the judgment involves a minor, the court shall take into account the best interests of the child in deciding the application of the ground under paragraph 14(v).

**(f) Level of courts covered**

10. The judgments of the District Court or above in Hong Kong is covered by the Arrangement.

11. In relation to the Mainland side, the Arrangement covers the judgments made by the Primary People's Courts of the Mainland or above.

**(g) Enforceability and finality of judgments**

12. The Arrangement applies to judgments which are legally enforceable under the law of the original court.

13. In respect of the Mainland, this means -

- (i) any judgment of the second instance;
- (ii) any judgment of the first instance from which no appeal is allowed or one in respect of which the time limit provided for an appeal therefrom under Mainland law has expired and no such appeal has been filed; and
- (iii) any judgment made in accordance with the procedure for trial supervision.

14. In the case of Hong Kong judgments, those made by the Court of Final Appeal and those by the Court of Appeal, the Court of First Instance of the High Court and the District Court which are legally effective (even if pending an appeal) are covered. In respect of a judgment made by a Hong Kong court on which appeal is pending, the Mainland court may suspend the recognition and enforcement procedures. Any orders which may be varied by the original court, including a maintenance order for periodical payment and a custody order,

are also covered in the Arrangement.

**(h) Procedures for application for recognition and enforcement and related matters**

15. The Arrangement provides that the procedure and the time limit for a party to apply for recognition and enforcement of a judgment shall be governed by the law of the requested place.

16. 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 Mainland. The total amount recovered shall not exceed the sum specified in the relevant judgment.

**Department of Justice**

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