

**THE MAINLAND JUDGMENTS IN MATRIMONIAL AND FAMILY CASES  
(RECIPROCAL RECOGNITION AND ENFORCEMENT) BILL  
AND  
THE MAINLAND JUDGMENTS IN MATRIMONIAL AND FAMILY CASES  
(RECIPROCAL RECOGNITION AND ENFORCEMENT) RULES  
CONSULTATION PAPER**

**February 2019**



**Department of Justice**

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**Consultation Paper on  
the Mainland Judgments in Matrimonial and Family Cases  
(Reciprocal Recognition and Enforcement) Bill and  
the Mainland Judgments in Matrimonial and Family Cases  
(Reciprocal Recognition and Enforcement) Rules**

**BACKGROUND**

At present, Mainland judgments on matrimonial and family matters are generally not recognized and enforceable in Hong Kong<sup>1</sup>. Neither does Mainland law expressly provide for the recognition and enforcement of Hong Kong judgments on matrimonial and family matters in the Mainland.

2. In view of the increasing number of cross-boundary marriages and related matrimonial matters, the Government of Hong Kong SAR and the Supreme People's Court 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婚姻家庭民事案件判決的安排”<sup>2</sup> (“Arrangement”) on 20 June 2017. The text of the Arrangement is set out at Annex A.

3. The Arrangement establishes a mechanism for reciprocal recognition and enforcement of civil judgments in matrimonial and family cases between Hong Kong and the Mainland, thereby providing better safeguards to families, in particular, parties to cross-boundary marriages and their children.

4. The 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 Arrangement. Specifically, the Arrangement will be implemented in the Mainland by way of judicial interpretation and in Hong Kong by way of legislation.

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<sup>1</sup> The exceptions include non-Hong Kong divorces recognized under Part IX of the Matrimonial Causes Ordinance (Cap. 179) and adoptions given legal effect under section 17 of the Adoption Ordinance (Cap. 290). Family matters are expressly excluded from the scope of the arrangement between Hong Kong and the Mainland titled “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” (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 Pursuant to Choice of Court Agreements between Parties Concerned*”) signed in July 2006 and which took effect in August 2008.

<sup>2</sup> The English translation of the title of the Arrangement is: “*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*”.

5. For the purpose of implementing the Arrangement in Hong Kong, the Department of Justice (“**DoJ**”) is preparing the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill (“**Bill**”) and the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Rules (“**Rules**”).

## **THE BILL**

6. A consultation draft of the Bill is attached at **Annex B** which will be **subject to revisions** after public consultation. The key features are outlined below.

### **A. Recognition and Enforcement of Mainland Judgments in Hong Kong**

#### ***A.1 Mechanism for Registration of Specified Orders***

7. Divisions 1 and 2 of Part 2 of the Bill (Clauses 7 to 14) provide for the registration of specified orders in an effective Mainland judgment<sup>3</sup> given in a matrimonial or family case. Schedule 2 of the Bill sets out the specified orders, being orders which may be made by a Mainland court in matrimonial or family cases in the Mainland stipulated under Article 3(1)(1) of the Arrangement<sup>4</sup>.

8. The specified orders in Schedule 2 of the Bill are categorized into three types:

- (a) Part 1 of Schedule 2 lists out the **care-related orders** such as orders relating to custody and guardianship of a child.
- (b) Part 2 of Schedule 2 lists out the **status-related orders** such as an order granting divorce and an order for the annulment of a marriage.
- (c) Part 3 of Schedule 2 lists out the **maintenance-related orders** such

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<sup>3</sup> Clause 5 of the Bill sets out what amounts to an effective Mainland judgment. It reflects Article 2(1)(1) of the Arrangement.

<sup>4</sup> Clause 3 of the Bill sets out what a Mainland judgment given in a matrimonial or family case means for the purpose of the Bill. Clause 3 of the Bill makes reference to the specified orders, reflecting Article 3(1)(1) of the Arrangement.

as orders relating to the maintenance of a child, spousal maintenance and division of property between parties to a marriage.

9. Mainland orders in relation to the determination of adoptive relationships are not covered in Schedule 2. Effect of adoption in the Mainland will continue to be governed by section 17 of the Adoption Ordinance (Cap. 290).

## ***A.2 Application for Registration***

10. Under Clause 8 of the Bill, subject to certain restrictions, a party to a Mainland judgment given in a matrimonial or family case may apply to the District Court<sup>5</sup> for an order to register one or more specified order(s) in the Mainland judgment, if the judgment is:

- (a) given on or after the commencement of the Bill (Clause 8(1)(a)); and
- (b) effective in the Mainland (Clause 8(1)(b)).

11. Clause 9 of the Bill sets out the restrictions on a registration application:

- (a) For a **care-related order** (Clause 9(1)), the registration application must not seek to have the order registered if the non-compliance first occurred more than 2 years before the application is made<sup>6</sup>.
- (b) For a **maintenance-related order** requiring the payment of a sum of money or the performance of an act (Clause 9(2)), the registration application may seek to register the order **only if** –
  - (i) by the date of the application, the due date for payment or performance of the act has passed but payment has **not** been made (or fully made) or the act has **not** been performed (or

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<sup>5</sup> Clause 10 of the Bill provides that the District Court may transfer the registration application to the Court of First Instance if it considers that the application can be more conveniently dealt with by the Court of First Instance.

<sup>6</sup> In effect, a party may seek to register a care-related order at any time after the Mainland judgment has become effective except that once there has been non-compliance, the application must be made within 2 years after the date on which the non-compliance first occurred.

fully performed); **and**

(ii) the application is made:

- (1) within 2 years after the date or period specified in the Mainland judgment for the payment to be made or the act to be performed, or
- (2) if no such date is specified in the order, within 2 years after the date on which the Mainland judgment has become effective.

(c) For a maintenance-related order requiring a payment or an act to be made or performed **periodically**, the registration application may seek to register the order **only if** (Clause 9(3)) –

- (i) as at the date of the application, the due date for any of the payments or performance of any of the acts has passed, but the payment in question has not been made (or fully made) or the act in question has not been performed (or fully performed); and
- (ii) the application is made within 2 years after the due date for the payment or performance of the act.

### ***A.3 Registration by the Court***

#### *Registration order*

12. Under Clause 11 of the Bill, the District Court<sup>7</sup> may, on a registration application in relation to any specified order, order the specified order to be registered if it is satisfied that the judgment is a Mainland judgment given in a matrimonial or family case on or after the commencement date of the Bill; and the judgment is effective in the Mainland.

#### *Certificate for a Mainland judgment*

13. For this purpose, Clause 11(2) of the Bill provides that until the contrary is proved, a Mainland judgment is presumed to be given in a matrimonial or family case and effective in the Mainland if a certificate certifying those matters

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<sup>7</sup> Or the Court of First Instance if the application has been transferred to that court under Clause 10.

is issued by the original Mainland court<sup>8</sup>.

*Further provisions for registration of a maintenance-related order*

14. In relation to a maintenance-related order, Clause 12(2) of the Bill provides that on the registration of the order, if a payment or act has been made or performed in part, the order may be registered **only** to the extent that it relates to the part of the payment or act that has not been made or performed.

15. For a maintenance-related order requiring a payment or an act to be made or performed **periodically**, Clauses 12(3) and (4) provide that the order may only be registered in relation to any payments or acts that are required to be made or performed by a date **within 2 years before** the application date, as well as payments or acts that are required by the order to be made or performed **after** the application date<sup>9</sup>.

*Sums to be included in registration and currency*

16. Clause 13 of the Bill provides for registration of a specified order to include certain sums, such as interests, costs, as well as any fine or charge payable to another party for failing to comply with the order within the time stipulated in the judgment. Clause 14 of the Bill provides that where a specified order requires payment of a sum denominated in a currency other than Hong Kong dollars, the sum is to be converted into Hong Kong dollars at the exchange rate prevailing at the date of registration.

**A.4 *Setting Aside the Registration***

17. Clause 16 of the Bill allows a party to the proceedings in which the Mainland judgment is given (other than the party who applied for the registration) to apply to set aside the registration of a specified order within the time limit specified by the court.

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<sup>8</sup> Clause 11(2) of the Bill seeks to reflect Article 5(1)(3) of the Arrangement.

<sup>9</sup> In other words, once there has been a default in a periodical payment or periodic performance of an obligation in a maintenance-related order, so long as other requirements for registration under Clause 9(3) are met, all future obligations to pay or perform an act under that order may also be registered even if the payment or performance of that obligation has not become due. This means a party will not have to apply to register the order again when non-compliance occurs in future, but as far as each payment (or each obligation to perform an act) in default is concerned, the party still needs to make separate applications to the court for execution. Pursuant to Clause 20(3), these future obligations will remain to be paid or performed on the relevant dates in accordance with the order.

18. The grounds on which registration of a specified order must be set aside are set out under Clause 17 of the Bill<sup>10</sup>.

#### ***A.5 Effect of Registration***

##### *Care-related order and maintenance-related order*

19. Clause 20 of the Bill provides that a registered care-related order or a maintenance-related order may be enforced in Hong Kong as if it were originally made by a registering court<sup>11</sup> and the registering court had jurisdiction to make it and it were made on the date of registration. On the registration of a care-related order or a maintenance-related order, proceedings may be taken for, or with respect to, the enforcement of the order as if it were an order originally made by the registering court on the day of registration. Sums of money required to be paid or acts required to be performed under a registered care-related order or a maintenance-related order are to be paid or performed under the provisions of the order.

##### *Status-related order*

20. A status-related order in a Mainland judgment is, on registration, recognized as valid in Hong Kong under Clause 21 of the Bill.

##### *Action to enforce a registered order*

21. Clause 22 of the Bill ensures that an action to enforce a registered order may be taken only after the expiry of the period within which an application to set aside the registration of the order may be made, and if an application to set aside is made, the application has been determined.

#### ***A.6 Stay of Hong Kong Proceedings on the Same Cause of Action***

22. Clause 27 of the Bill provides that where a registration application is made in relation to any specified order in a Mainland judgment and proceedings are pending before a court in Hong Kong (***adjudicating court***) in relation to a cause of action that is the same as that of the Mainland judgment, the adjudicating court must order that the proceedings in relation to the cause of

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<sup>10</sup> The grounds for setting aside under Clause 17 of the Bill reflect those provided under Article 9 of the Arrangement and the party applying to set aside the registration order should bear the burden of proof.

<sup>11</sup> A registering court may either be the District Court or the Court of First Instance, depending on whether the District Court has transferred the proceedings for the registration application to the Court of First Instance under Clause 10. A definition of “registering court” is set out under Clause 2 of the Bill.



action before the adjudicating court be stayed<sup>12</sup>. Such proceedings will be stayed until the adjudicating court, on the application of a party to the proceedings, orders that the proceedings (or any part of it) be resumed or terminated (Clause 27(4) of the Bill).

23. A party to the proceedings may make an application to resume or terminate the proceedings only if the registration application is finally disposed of (Clause 27(5)). Clause 27(6) sets out when a registration application would for this purpose be considered to be finally disposed of.

#### ***A.7 Restriction on Bringing Proceedings on the Same Cause of Action in Hong Kong***

24. Where a registration application in relation to any specified order is pending, or a specified order or orders in a Mainland judgment is registered, subject to certain exceptions, Clause 28 of the Bill provides that a party to the Mainland judgment must not bring in a court in Hong Kong proceedings in relation to the same cause of action in respect of which the Mainland judgment was given<sup>13</sup>.

25. An exception to this restriction is where the proceedings to be brought in Hong Kong are proceedings under Part IIA (Financial Relief in Hong Kong after Divorce, etc. Outside Hong Kong) of the Matrimonial Proceedings and Property Ordinance (Cap. 192) (Clause 28(2) of the Bill).

#### **B. Recognition of Mainland Divorce Certificates in Hong Kong**

26. Clause 30 of the Bill provides that a party to a divorce specified in a Mainland divorce certificate issued on or after the commencement of the Bill may apply to the District Court for recognition of the divorce specified.

27. The effect of the recognition is that the divorce so specified in the certificate is recognized as valid in Hong Kong if the court is satisfied that the certificate is valid in the Mainland (Clause 31(1) of the Bill). For this purpose, a Mainland divorce certificate is presumed, until the contrary is proved, to be valid in the Mainland if it is notarized in accordance with the law of the Mainland (Clause 31(2) of the Bill).

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<sup>12</sup> This reflects Article 16 of the Arrangement.

<sup>13</sup> This reflects Article 17 of the Arrangement.

28. Clause 33 of the Bill provides that the other party to the Mainland divorce certificate may, within the time limit specified, apply to set aside the order for the recognition. The grounds on which the recognition order must be set aside are set out under Clause 34 of the Bill<sup>14</sup>.

**C. Certified Copy of and Certificate for Hong Kong Judgments for Recognition and Enforcement in the Mainland**

29. To facilitate a party in seeking recognition and enforcement in the Mainland of a Hong Kong judgment<sup>15</sup> given in a matrimonial or family case pursuant to Article 5(1)(1) of the Arrangement, Clauses 38 to 39 of the Bill provide that a party to an effective Hong Kong judgment<sup>16</sup> in a matrimonial family case<sup>17</sup> given on or after the commencement of the Bill may apply to the relevant Hong Kong court for a certified copy of the Hong Kong judgment<sup>18</sup>.

30. The certified copy of the Hong Kong judgment would be accompanied by a certificate issued by the relevant Hong Kong court, certifying that the relevant Hong Kong judgment is given in a matrimonial or family case and is effective in Hong Kong<sup>19</sup>.

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<sup>14</sup> The grounds for setting aside under Clause 34 of the Bill reflect those provisions under Article 9 of the Arrangement which are applicable to a Mainland divorce certificate and the party apply to set aside the recognition order should bear the burden of proof.

<sup>15</sup> In relation to the recognition in the Mainland of 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, no certification is required by a Hong Kong court and only a notarized copy of the agreement or memorandum is required to be submitted to the relevant Mainland court (Article 5(2)(2) of the Arrangement).

<sup>16</sup> Clause 6 of the Bill sets out what amounts to an effective Hong Kong judgment. It reflects Article 2(1)(2) of the Arrangement.

<sup>17</sup> The meaning of a Hong Kong judgment given in a matrimonial or family case is set out under Clause 4 of the Bill. Clause 4 of the Bill reflects Article 3(1)(2) of the Arrangement.

<sup>18</sup> The requirement for a certified copy of the judgment is provided under Article 5(1)(2) of the Arrangement.

<sup>19</sup> Such a certificate is required under Article 5(1)(3) of the Arrangement.

## **THE RULES**

31. A consultation draft of the Rules is attached at **Annex C** which is **subject to revisions** after public consultation. The key features are outlined below.

32. Part 2 sets out the rules concerning, among others,

- (a) an application for registration of a specified order or orders contained in a Mainland judgment, including the requirements concerning the supporting affidavit;
- (b) an order for registration;
- (c) a notice of registration; and
- (d) an application to set aside the registration of a specified order.

33. Part 3 sets out the rules concerning an application for the recognition of the divorce specified in a Mainland divorce certificate as well as an application to set aside the order for recognition.

34. Part 4 deals with execution of a specified order registered under the Bill. In particular, Rule 21 provides for the application of the practice and procedure of the Rules of the High Court (Cap. 4A) (with necessary modifications), as well as the application of certain rules of the Matrimonial Causes Rules (Cap. 179A) (with necessary modifications).

35. Part 5 sets out the rules concerning an application for a certified copy of a Hong Kong judgment given in a matrimonial or family case as well as the rules concerning the issue by a Hong Kong court of a certificate in respect of a Hong Kong judgment<sup>20</sup>.

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<sup>20</sup> See the discussion in paragraphs 29 - 30 above.

## **CONSULTATION**

36. DoJ would like to seek the views from the public on the proposed Bill and Rules outlined above.

37. Please address your views and comments to the following on or before **8 March 2019** –

China Law Unit  
Legal Policy Division  
Department of Justice  
5/F, East Wing, Justice Place  
18 Lower Albert Road  
Central, Hong Kong SAR

Fax number: 3918 4799

E-mail address: [matrimonialbill@doj.gov.hk](mailto:matrimonialbill@doj.gov.hk)

38. DoJ may, as appropriate, reproduce, quote, summarize or publish the written comments received, in whole or in part, in any form, without seeking permission of the contributing parties.

39. Names of the contributing parties and their affiliations may be referred to in other documents that DoJ may publish and disseminate by different means after the consultation. If any contributing parties do not wish their names and/or affiliations to be disclosed, please expressly state so when making your written submission. Any personal data provided will only be used by DoJ and/or other government departments/agencies for purposes which are directly related to the consultation.

**Legal Policy Division  
Department of Justice  
February 2019**

## 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

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，現就婚姻家庭民事案件判決的認可和執行問題作出如下安排：

**第一條** 當事人向香港特別行政區法院申請認可和執行內地人民法院就婚姻家庭民事案件作出的生效判決，或者向內地人民法院申請認可和執行香港特別行政區法院就婚姻家庭民事案件作出的生效判決的，適用本安排。

當事人向香港特別行政區法院申請認可內地民政部門所發的離婚證，或者向內地人民法院申請認可依據《婚姻制度改革條例》（香港法例第 178 章）第 V 部、第 VA 部規定解除婚姻的協議書、備忘錄的，參照適用本安排。

## **第二條 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和區域法院作出的已經發生法律效力的判決，包括依據香港法律可以在生效後作出更改的命令。

前款所稱判決，在內地包括判決、裁定、調解書，在香港特別行政區包括判決、命令、判令、訟費評定證明書、定額訟費證明書，但不包括雙方依據其法律承認的其他國家和地區法院作出的判決。

## **第三條 本安排所稱婚姻家庭民事案件：**

（一）在內地是指：

1. 婚內夫妻財產分割糾紛案件；
2. 離婚糾紛案件；
3. 離婚後財產糾紛案件；

4. 婚姻無效糾紛案件；
5. 撤銷婚姻糾紛案件；
6. 夫妻財產約定糾紛案件；
7. 同居關係子女撫養糾紛案件；
8. 親子關係確認糾紛案件；
9. 撫養糾紛案件；
10. 扶養糾紛案件（限於夫妻之間扶養糾紛）；
11. 確認收養關係糾紛案件；
12. 監護權糾紛案件（限於未成年子女監護權糾紛）；
13. 探望權糾紛案件；
14. 申請人身安全保護令案件。

（二）在香港特別行政區是指：

1. 依據香港法例第 179 章《婚姻訴訟條例》第 III 部作出的離婚絕對判令；
2. 依據香港法例第 179 章《婚姻訴訟條例》第 IV 部作出的婚姻無效絕對判令；

3. 依據香港法例第 192 章《婚姻法律程序與財產條例》作出的在訟案待決期間提供贍養費令；
4. 依據香港法例第 13 章《未成年人監護條例》、第 16 章《分居令及贍養令條例》、第 192 章《婚姻法律程序與財產條例》第 II 部、第 IIA 部作出的贍養令；
5. 依據香港法例第 13 章《未成年人監護條例》、第 192 章《婚姻法律程序與財產條例》第 II 部、第 IIA 部作出的財產轉讓及出售財產令；
6. 依據香港法例第 182 章《已婚者地位條例》作出的有關財產的命令；
7. 依據香港法例第 192 章《婚姻法律程序與財產條例》在雙方在生時作出的修改贍養協議的命令；
8. 依據香港法例第 290 章《領養條例》作出的領養令；
9. 依據香港法例第 179 章《婚姻訴訟條例》、第 429 章《父母與子女條例》作出的父母身份、婚生地位或者確立婚生地位的宣告；



10. 依據香港法例第 13 章《未成年人監護條例》、第 16 章《分居令及贍養令條例》、第 192 章《婚姻法律程序與財產條例》作出的管養令；
11. 就受香港法院監護的未成年子女作出的管養令；
12. 依據香港法例第 189 章《家庭及同居關係暴力條例》作出的禁制騷擾令、驅逐令、重返令或者更改、暫停執行就未成年子女的管養令、探視令。

#### **第四條 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、經常居住地或者被申請人住所地、經常居住地、財產所在地的中級人民法院提出；

（二）在香港特別行政區向區域法院提出。

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。

**第五條** 申請認可和執行本安排第一條第一款規定的判決的，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，證明該判決屬於本安排規定的婚姻家庭民事案件生效判決；
- （四）判決為缺席判決的，應當提交法院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申請的除外；
- （五）經公證的身份證件複印件。

申請認可本安排第一條第二款規定的離婚證或者協議書、備忘錄的，應當提交下列材料：

- （一）申請書；
- （二）經公證的離婚證複印件，或者經公證的協議書、備忘錄複印件；
- （三）經公證的身份證件複印件。

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。

**第六條** 申請書應當載明下列事項：

（一）當事人的基本情況，包括姓名、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和執行情況。

**第七條** 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。

**第八條** 法院應當盡快審查認可和執行的請求，並作出裁定或者命令。

**第九條** 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，法院審查核實後，不予認可和執行：

（一）根據原審法院地法律，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；

（二）判決是以欺詐方法取得的；

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

（四）被請求方法院已經就同一爭議作出判決，或者已經認可和執行其他國家和地區法院就同一爭議所作出的判決的。

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，不予認可和執行。

申請認可和執行的判決涉及未成年子女的，在根據前款規定審查決定是否認可和執行時，應當充分考慮未成年子女的最佳利益。

**第十條** 被請求方法院不能對判決的全部判項予以認可和執行時，可以認可和執行其中的部份判項。

**第十一條** 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，可以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，可以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。

**第十二條** 在本安排下，內地人民法院作出的有關財產歸一方所有的判項，在香港特別行政區將被視為命令一方向另一方轉讓該財產。

**第十三條** 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。

兩地法院執行財產的總額不得超過判決確定的數額。應對方法院要求，兩地法院應當相互提供本院執行判決的情況。

**第十四條** 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、遲延履行金、訴訟費，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、定額訟費證明書核定或者命令支付的費用。

**第十五條** 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。

**第十六條** 在審理婚姻家庭民事案件期間，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。

**第十七條** 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。

**第十八條** 被請求方法院在受理認可和執行判決的申請之前或者之後，可以依據其法律規定採取保全或者強制措施。

**第十九條** 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。

**第二十條** 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。

**第二十一條** 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。

**第二十二條** 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內部程序後，由雙方公布生效日期。

本安排於二零一七年六月二十日在香港簽署，一式兩份。



(Courtesy English Translation)

**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**

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 for the recognition and enforcement of judgments in civil matrimonial and family cases:

**Article 1** This Arrangement applies to cases where a party applies to a court of the HKSAR for the recognition and enforcement of a legally effective judgment made by a people's court of the Mainland in a civil matrimonial and family case, and where a party applies to a people's court of the Mainland for the recognition and enforcement of a legally effective judgment made by a court of the HKSAR in a civil matrimonial and family case.

Where a party applies to a court of the HKSAR for recognition of a divorce certificate issued by a civil affairs department in the Mainland, or applies to a people's court of the Mainland for recognition of an agreement or memorandum for dissolution of a marriage under Part V or Part VA of the Marriage Reform Ordinance (Chapter 178 of the Laws of Hong Kong), this Arrangement applies correspondingly by reference

**Article 2** 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 and the District Court, including any order that may be varied after a judgment has taken effect in accordance with the law of the HKSAR.

For the purposes of the preceding paragraphs, a judgment includes, in the case of the Mainland, any judgment, ruling and conciliatory statement; and in the case of the HKSAR, includes any judgment, order, decree, allocatur and certificate of fixed costs, but excludes any judgment given by a court of another country or place which is recognised in the Mainland or the HKSAR under their respective law.

**Article 3** A civil matrimonial and family case referred to in this Arrangement:

(1) in the case of the Mainland, means:

1. dispute over division of the property of parties to a marriage during the subsistence of the marriage;
2. dispute over divorce;
3. dispute over property after divorce;
4. dispute over invalidity of a marriage;
5. dispute over annulment of a marriage;
6. dispute over a matrimonial property agreement;
7. dispute over custody or maintenance of a child arising from cohabitation;
8. dispute over confirmation of parentage;
9. dispute over custody or maintenance of a child;
10. dispute over spousal maintenance;
11. dispute over confirmation of an adoptive relationship;

12. dispute over right of guardianship (limited to guardianship of a minor child);
13. dispute over right of access to a child;
14. application for an order for protection of a person.

(2) in the case of the HKSAR, means:

1. a decree absolute of divorce granted under Part III of the Matrimonial Causes Ordinance (Chapter 179 of the Laws of Hong Kong);
2. a decree absolute of nullity granted under Part IV of the Matrimonial Causes Ordinance (Chapter 179 of the Laws of Hong Kong);
3. an order made under the Matrimonial Proceedings and Property Ordinance (Chapter 192 of the Laws of Hong Kong) for maintenance pending the determination of a suit;
4. a maintenance order made under the Guardianship of Minors Ordinance (Chapter 13 of the Laws of Hong Kong), the Separation and Maintenance Orders Ordinance (Chapter 16 of the Laws of Hong Kong), or Part II or Part IIA of the Matrimonial Proceedings and Property Ordinance (Chapter 192 of the Laws of Hong Kong);
5. an order for transfer or sale of property made under the Guardianship of Minors Ordinance (Chapter 13 of the Laws of Hong Kong), or Part II or Part IIA of the Matrimonial Proceedings and Property Ordinance (Chapter 192 of the Laws of Hong Kong);
6. an order made under the Married Persons Status Ordinance (Chapter 182 of the Laws of Hong Kong) with respect to property ;

7. an order made under the Matrimonial Proceedings and Property Ordinance (Chapter 192 of the Laws of Hong Kong) for the alteration of maintenance agreements during the lives of the parties;
8. an adoption order made under the Adoption Ordinance (Chapter 290 of the Laws of Hong Kong);
9. a declaration regarding the parentage, legitimacy or legitimation made under the Matrimonial Causes Ordinance (Chapter 179 of the Laws of Hong Kong), or the Parent and Child Ordinance (Chapter 429 of the Laws of Hong Kong);
10. an order in relation to custody made under the Guardianship of Minors Ordinance (Chapter 13 of the Laws of Hong Kong), the Separation and Maintenance Orders Ordinance (Chapter 16 of the Laws of Hong Kong), or the Matrimonial Proceedings and Property Ordinance (Chapter 192 of the Laws of Hong Kong);
11. a custody order made in respect of a minor child who has been made a ward of court;
12. a non-molestation, ouster or re-entry order made under the Domestic and Cohabitation Relationships Violence Ordinance (Chapter 189 of the Laws of Hong Kong) and an order made under the Domestic and Cohabitation Relationships Violence Ordinance varying or suspending the execution of a custody or access order made in respect of a minor child.

**Article 4** An application for recognition and enforcement of a judgment stipulated in this Arrangement:

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

- (2) in the case of the HKSAR, shall be filed with the District 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 5** An applicant applying for recognition and enforcement of a judgment stipulated in Article 1(1) of 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 in a civil matrimonial and family case under this Arrangement;
- (4) where the judgment is a default judgment, a document certifying that the party concerned has been lawfully summoned, unless the judgment expressly states the same, or the absent party is the party applying for recognition and enforcement;
- (5) a notarised copy of the identity card.

An applicant applying for recognition and enforcement of a divorce certificate or an agreement or memorandum stipulated in Article 1(2) of this Arrangement shall submit the following documents:

- (1) an application;

(2) a notarised copy of the divorce certificate, or a notarised copy of the agreement or memorandum;

(3) a notarised copy of the identify card.

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 6** An application shall specify the following:

(1) particulars of the parties, including the name, address, particulars of identity documents, means of contact, etc.;

(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 enforcement of the judgment in any other court, and the status of its enforcement.

**Article 7** The time limit, 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 8** The court shall examine the application for recognition and enforcement as soon as possible and make a decision or order.

**Article 9** With respect to an application for recognition and enforcement of a judgment, the court 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 respondent was not lawfully summoned in accordance with the law of the place of the original court; or although the respondent was lawfully summoned, the respondent was not given a reasonable opportunity to make representations or defend the respondent's case;

(2) the judgment was obtained by fraud;

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

(4) a court of the requested place has rendered a judgment on the same dispute, or has recognised and enforced a judgment on the same dispute given by a court of 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.

Where an application for recognition and enforcement of a judgment concerns a minor child, in assessing and deciding whether to recognise and enforce a judgment in accordance with the preceding paragraph, the best interests of the minor child shall be fully considered.

**Article 10** Where a court of the requested place cannot recognise and enforce a judgment in whole, it may recognise and enforce it in part.

**Article 11** 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 proceedings. After the appeal, the recognition and enforcement proceedings 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 proceedings. After the retrial, the recognition and enforcement proceedings 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 12** For the purposes of this Arrangement, a judgment given by a people's court of the Mainland vesting a property in one party is deemed in the HKSAR to be an order for transfer of the property from one party to the other.

**Article 13** 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 total amount to be recovered from enforcing the judgment in the courts of the two places respectively shall not exceed the amount determined in the judgment. 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.

**Article 14** In respect of judgments for the award of property, the scope of reciprocal recognition and enforcement by the courts of the Mainland and of the HKSAR shall include the property awarded, the corresponding interest, payment for late compliance and costs, 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 allocatur, allowed under a certificate of fixed costs, or the costs awarded under an order.

**Article 15** Where any party is aggrieved by a decision or an order made by the court of the requested case 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 16** If in the course of adjudicating a civil matrimonial and family case, the court of one place receives an application brought by a party for recognition and enforcement of a judgment made by a 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 17** 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 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, 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 18** The 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 the requested place.

**Article 19** A party who applies for the recognition and enforcement of a judgment shall pay the fees in accordance with the laws and regulations on litigation fees of the requested place.

**Article 20** 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 21** 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 22** Following the promulgation of a judicial interpretation by the Supreme People's Court and the completion of the relevant internal procedures in the HKSAR, both sides shall announce a date on which this Arrangement shall commence.

This Arrangement is signed in duplicate in the HKSAR, this 20th day of June 2017.

Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill

**Mainland Judgments in Matrimonial and Family Cases  
(Reciprocal Recognition and Enforcement) Bill**

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# A BILL

## To

Provide for the recognition and enforcement in Hong Kong of judgments in matrimonial and family cases given in the Mainland, for facilitating the recognition and enforcement in the Mainland of such judgments given in Hong Kong, and for the recognition of Mainland divorce certificates, so as 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 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 Matrimonial and Family Cases (Reciprocal Recognition and 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

In this Ordinance—

**Arrangement** ( ) means 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 (a translation of “《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》”) made between the Supreme People’s Court of the People’s Republic of China and the Government of the Hong Kong Special Administrative Region signed on 20 June 2017;

**care-related order** ( ) means an order set out in Part 1 of Schedule 2;

**effective** ( )—

(a) for a Mainland judgment—see section 5; and

(b) for a Hong Kong judgment—see section 6;

**Hong Kong judgment** ( ) includes a judgment, order, decree, allocatur or certificate of fixed costs given by a court in Hong Kong;

**Hong Kong judgment given in a matrimonial or family case** ( )—see section 4(1);

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

**Mainland divorce certificate** ( ) means a divorce certificate issued by a civil affairs department in the Mainland;

**Mainland judgment** ( ) includes a judgment, ruling or conciliatory statement given by a court in the Mainland but does not include a judgment given by a court of a place

outside the Mainland that is recognized in the Mainland under the law of the Mainland;

***Mainland judgment given in a matrimonial or family case*** ( )—see section 3(1);

***maintenance-related order*** ( ) means an order set out in Part 3 of Schedule 2;

***matrimonial or family case*** ( )—

(a) in relation to a Mainland judgment—see section 3(2); and

(b) in relation to a Hong Kong judgment—see section 4(2);

***original Mainland court*** ( ), in relation to a Mainland judgment, means the court in the Mainland by which the judgment was given;

***prescribed fee*** ( ), in relation to a matter, means the fee prescribed for that matter in the rules made under section 40;

***property*** ( ) means—

(a) real or personal property;

(b) an estate or interest in any real or personal property;

(c) money;

(d) a negotiable instrument;

(e) a prescribed instrument within the meaning of section 137B of the Banking Ordinance (Cap. 155);

(f) a debt or other chose in action; or

(g) any other right or interest whether in possession or not;

***registered order*** ( ) means a specified order in respect of which an order under section 11(1) has been made for it to be registered;

**registering court** ( ), in relation to a specified order, means the Court of First Instance or District Court that makes an order under section 11(1) for the registration of the specified order;

**registration application** ( ) means an application under section 8(1) for an order to register a specified order or orders;

**specified order** ( ) means an order set out in Schedule 2 in a Mainland judgment;

**status-related order** ( ) means an order set out in Part 2 of Schedule 2.

### **3. Mainland judgment given in matrimonial or family case**

- (1) For the purposes of this Ordinance, a Mainland judgment given in a matrimonial or family case is a Mainland judgment that is given in a matrimonial or family case in the Mainland and that contains at least one specified order.
- (2) For the purposes of this Ordinance, matrimonial or family cases in relation to a Mainland judgment are those set out in paragraphs 1 to 10, 12, 13 and 14 of Article 3(1)(1) of the Arrangement.
- (3) The Chinese text of paragraphs 1 to 10, 12, 13 and 14 of Article 3(1)(1) of the Arrangement is reproduced in the Chinese text of Schedule 1. An English translation of those paragraphs is set out in the English text of that Schedule.

### **4. Hong Kong judgment given in matrimonial or family case**

- (1) For the purposes of this Ordinance, a Hong Kong judgment given in a matrimonial or family case is a Hong Kong judgment that is given in or in relation to a matrimonial or family case in Hong Kong.
- (2) For the purposes of this Ordinance, matrimonial or family cases in relation to a Hong Kong judgment are proceedings in

which one or more orders specified in Schedule 3 are granted or made.

**5. Effective Mainland judgment**

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

**6. Effective Hong Kong judgment**

- (1) For the purposes of this Ordinance, a Hong Kong judgment is effective 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; or
    - (iv) the District Court.
  - (2) To avoid doubt, subsection (1) applies also to a judgment that may be varied by a court in Hong Kong after the judgment has taken effect according to the law of Hong Kong.
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## **Part 2**

# **Registration in Hong Kong of Mainland Judgment Given in Matrimonial or Family Case**

## **Division 1—Application for Registration**

### **7. Interpretation**

In this Division—

**relevant date** ( ), in relation to a Mainland judgment—

- (a) if it is effective in the Mainland when it is given—means the date on which the judgment is given; or
- (b) if paragraph (a) does not apply—means the date on which the judgment becomes effective in the Mainland.

### **8. Application for registration of specified order in Mainland judgment**

- (1) Subject to section 9, a party to a Mainland judgment given in a matrimonial or family case may apply to the District Court for an order to register a specified order, or any one or more of the specified orders, in the judgment if the judgment is—
  - (a) given on or after the commencement date of this Ordinance; and
  - (b) effective in the Mainland.
- (2) The application must be accompanied by the prescribed fee.

### **9. Restriction on registration application**

- (1) A registration application must not seek to register a care-related order if—

- 
- (a) there has been non-compliance with the order; but
    - (b) the application is made 2 years after the date on which the non-compliance first occurred.
  - (2) A registration application may seek to register a maintenance-related order requiring the payment of a sum of money or the performance of an act (other than a periodical payment or an act that is to be performed periodically) only if—
    - (a) the following conditions are satisfied—
      - (i) the order specifies a date or a period (that is, or that expires, before the date of the application) for the payment to be made, or the act to be performed;
      - (ii) the payment has not been made or fully made or the act has not been performed or fully performed by the date of the application; and
      - (iii) the application is made within 2 years after that date or the last day of that period; or
    - (b) the following conditions are satisfied—
      - (i) the order does not specify a date or a period for the payment to be made, or the act to be performed;
      - (ii) the payment has not been made or fully made or the act has not been performed or fully performed by the date of the application; and
      - (iii) the application is made within 2 years after the relevant date in relation to the judgment.
  - (3) A registration application may seek to register a maintenance-related order requiring a payment or an act to be made or performed periodically only if—
    - (a) as at the date of the application, any payment or act required to be made or performed by a date (*due date*)

before the date of the application has not been made or fully made or has not been performed or fully performed; and

- (b) the due date for the payment or act falls on a day within 2 years before the date of the application.

**10. Transfer of application from District Court to Court of First Instance**

- (1) The District Court may, on its own initiative, make an order (*transfer order*) to transfer a registration application to the Court of First Instance.
- (2) The District Court may make the transfer order only if it considers that the application can more conveniently be dealt with by the Court of First Instance.
- (3) An application transferred by a transfer order is regarded as having been transferred to the Court of First Instance on the date on which the order is made, unless the Court of First Instance otherwise directs.
- (4) On the transfer of the application—
  - (a) a document issued, served, filed or lodged in relation to the application on a date before the transfer is regarded as having been issued, served, filed or lodged on that date for the purpose of the application in the Court of First Instance; and
  - (b) a step taken by a party in relation to the application on a date before the transfer is regarded as having been taken on that date for the purpose of the application in the Court of First Instance.
- (5) On the transfer of the application, a decision made by the District Court in relation to the application on a date before the transfer has effect in the Court of First Instance as if the



decision were made by the Court of First Instance on that date, unless the Court of First Instance otherwise directs.

## **Division 2—Registration**

### **11 Registration of specified order in Mainland judgment**

- (1) On a registration application in relation to any specified order in a Mainland judgment, the District Court or (if a transfer order under section 10(1) has been made) the Court of First Instance may order the specified order to be registered in accordance with this Division if it is satisfied that—
  - (a) the judgment is a Mainland judgment given in a matrimonial or family case on or after the commencement date of this Ordinance; and
  - (b) the judgment is effective in the Mainland.
- (2) For the purposes of subsection (1)(a) and (b), until the contrary is proved, the Mainland judgment is presumed 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.

### **12. Further provisions for registration of maintenance-related order**

- (1) Subsection (2) applies to a registration application in relation to a maintenance-related order requiring the payment of a sum of money or the performance of an act (other than a payment or an act required to be made or performed periodically).
- (2) If a payment or act has been made or performed in part, the order may be registered under section 11(1) only to the extent that it relates to the part of the payment or act that has not been made or performed.

- (3) Subsection (4) applies to a registration application in relation to a maintenance-related order requiring a payment or an act to be made or performed periodically.
- (4) The order may be registered under section 11(1) only in relation to any payments or acts that—
  - (a) are required by the order to be made or performed by a date that falls on a day—
    - (i) within 2 years before the date of the registration application (*application date*); or
    - (ii) after the application date; and
  - (b) have not been made or performed.

**13. Sums to be included on registration of specified order**

- (1) On the registration of a specified order under section 11(1), the following sums are also registered as if they were part of the order—
  - (a) to the extent that they relate to the order—
    - (i) any interest that, under the law of the Mainland, becomes due under the judgment up to the time of the registration; and
    - (ii) any costs duly certified by the original Mainland court;
  - (b) any fine or charge payable by a party to another party to the proceedings in which the judgment is given for failing to comply with the order within the time stipulated in the judgment; and
  - (c) any reasonable costs of, or incidental to, the registration of the order, including the costs of obtaining a copy of the judgment duly sealed by the original Mainland court.

- (2) To avoid doubt, the following sums may not be registered under section 11(1)—
  - (a) taxes or other charges of a like nature; and
  - (b) a fine or other penalty, other than a fine or charge payable by a party to another party to the proceedings in which the judgment is given for failing to comply with an order in the judgment within the time stipulated in the judgment.

**14. Sum denominated in currency other than Hong Kong dollar**

- (1) This section applies if—
  - (a) a sum of money is required to be paid under a specified order; and
  - (b) the sum payable is denominated in a currency other than Hong Kong dollars.
- (2) The order, when registered under section 11(1), must be registered as if the order were requiring the payment of a sum denominated in Hong Kong dollars that, on the basis of the rate of exchange prevailing at the date of registration, is equivalent to the sum payable under the order.

**Division 3—Setting Aside Registration of Specified Order**

**15. Registering court to specify time limit for setting aside registration of specified order**

- (1) The registering court must, when making an order under section 11(1) for the registration of any specified order, specify the period within which an application for setting aside the registration may be made.

- (2) The registering court may extend the period (either as originally fixed or as subsequently extended) within which an application mentioned in subsection (1) may be made.

**16. Application for setting aside registration of specified order**

If a specified order in a Mainland judgment is registered, a party to the proceedings in which the judgment was given (other than the party who applied for the registration) may, within the time limit specified under section 15(1) (or as extended under section 15(2)), apply to the registering court to set aside the registration of the order.

**17. Grounds on which registration of specified order must be set aside**

- (1) The registering court must, on an application made under section 16 to set aside the registration of a specified order in a Mainland judgment, set aside the registration if it is satisfied that—
- (a) a requirement mentioned in Division 1 or 2 has not been complied with;
  - (b) the respondent in the proceedings in which the judgment was given was not summoned according to the law of the Mainland;
  - (c) the respondent mentioned in paragraph (b) was summoned according to the law of the Mainland, but was not given a reasonable opportunity to make submissions or defend the proceedings;
  - (d) the judgment was obtained by fraud;
  - (e) the judgment was given in respect of proceedings for a cause of action between the parties (*parties*) that were accepted by a court in the Mainland after proceedings for

the same cause of action between the same parties have been started in a court in Hong Kong;

- (f) a judgment in respect of the same cause of action between the parties has been given by a court in Hong Kong;
  - (g) a judgment in respect of the same cause of action between the parties has been given by a court in a place outside Hong Kong, and the judgment has already been recognized by a court in Hong Kong;
  - (h) the recognition of the specified order, or the enforcement of the specified order, is manifestly contrary to the public policy of Hong Kong; or
  - (i) the judgment has been reversed or otherwise set aside pursuant to an appeal or a retrial under the law of the Mainland.
- (2) For the purposes of subsection (1)(h), if the judgment involves a person under the age of 18 years, in deciding whether the recognition of the specified order, or the enforcement of the specified order, is manifestly contrary to the public policy of Hong Kong, the registering court must take into account the best interests of the person.

**18. Registering court may adjourn application to set aside registration**

- (1) This section applies if, on an application made under section 16 to set aside the registration of a specified order in a Mainland judgment, the registering court is satisfied that—
- (a) an appeal against the judgment is pending; or
  - (b) the proceedings in which the judgment was given are ordered to be retried.

- (2) The registering court may, on the terms it considers just, adjourn the application until after the expiry of the period that appears to the registering court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal or retrial disposed of.

**19. Restriction on further registration application on setting aside of registration**

- (1) Except as provided by subsections (2) and (3), if the registration of a specified order is set aside under section 17, the original applicant must not make a further registration application to register the order.
- (2) If the registration of a specified order in a Mainland judgment is set aside solely on the ground that the judgment is not effective in the Mainland, a further registration application may be made to register the order if and when the judgment becomes effective in the Mainland.
- (3) If the registration of a specified order is set aside solely on the ground that—
  - (a) the order requires the payment of a sum of money, or the performance of an act; and
  - (b) despite the fact that part of the payment had been made, or part of the act had been performed, the whole sum or act was registered,

a further registration application may be made to register the order in so far as it relates to the part of the payment or act that has not been made or performed.

## **Division 4—Effect of Registration**

### **20. Effect of registration: general**

- (1) Subject to the provisions of this Division, a registered order that is a care-related order or a maintenance-related order may be enforced in Hong Kong as if—
  - (a) it were originally made by the registering court and the registering court had jurisdiction to make it; and
  - (b) it were made on the day of registration.
- (2) Without limiting subsection (1), on the registration of a care-related order or a maintenance-related order—
  - (a) proceedings may be taken for, or with respect to, the enforcement of the order;
  - (b) if a sum is ordered to be paid under the order, the sum carries interest; and
  - (c) the registering court has the same control over the execution of the order,as if it were an order originally made by the registering court on the day of registration.
- (3) Sums of money required to be paid or acts required to be performed under a care-related order or a maintenance-related order are to be paid or performed in accordance with the order as from the date on which they are required to be paid or performed under the provisions of the order.

### **21. Status-related orders**

- (1) A status-related order is, on registration, recognized as valid in Hong Kong.
- (2) However, subsection (1) is not to be construed as requiring the recognition of any findings of fault made in any proceedings.

**22. Registered order not to be enforced before end of setting aside procedure**

An action to enforce a registered order may be taken only after—

- (a) the expiry of the period within which an application to set aside the registration of the order may be made under section 16; or
- (b) if an application under section 16 is made during the period mentioned in paragraph (a)—the application has been determined under section 17.

**23. Removal of registered order in District Court into Court of First Instance**

- (1) This section applies if the registering court is the District Court.
- (2) A person entitled to enforce a registered order may make an ex parte application to the District Court for the registration of the order to be removed into the Court of First Instance.
- (3) On application, the Registrar of the District Court may direct the removal of the registered order into the Court of First Instance.
- (4) However, the Registrar may make the direction only if the Registrar is satisfied that the order cannot be conveniently enforced in the District Court.
- (5) If an order is so removed to the Court of First Instance, the order has the same force and effect and the same proceedings may be taken on it as if it had been originally registered in the Court of First Instance on the date on which it was registered by the District Court.



## 24. **Transfer of property**

- (1) This section applies in relation to a registered order in a Mainland judgment that is a specified order set out in item 4 of Part 3 of Schedule 2.
- (2) If the registered order orders any property to be vested in or delivered to a party to the proceedings in which the judgment was given (*transferee*), or declares that any property belongs to the transferee, the order is taken to be an in personam order for the transfer of the property from one party to the proceedings to the transferee.
- (3) If—
  - (a) the registered order orders the transfer of any property from one party to the proceedings in which the judgment was given to the other party; or
  - (b) the registered order is taken under subsection (2) to be an in personam order for the transfer of any property from one party to the proceedings in which the judgment was given to a transferee,the court in which the order is enforced may direct the party who is to transfer the property (*transferor*) to execute any conveyance, contract or other document, or endorse any negotiable instrument.
- (4) If the transferor neglects or refuses to comply with the direction or cannot, after reasonable inquiry, be found, the court in which the order is enforced—
  - (a) for the Court of First Instance—may exercise the power under section 25A(1) of the High Court Ordinance (Cap. 4) and section 25A(2) and (3) of that Ordinance applies accordingly; or

- (b) for the District Court—may exercise the power under section 38A(2) of the District Court Ordinance (Cap. 336) and section 38A(3) and (4) of that Ordinance applies accordingly.

**25. Payment of maintenance: attachment of income order**

If a registered order is an order against a person for the payment of maintenance, section 20 of the Guardianship of Minors Ordinance (Cap. 13) applies in relation to the order as if the order were a maintenance order defined by section 2 of that Ordinance.

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

Section 20 of the Guardianship of Minors Ordinance (Cap. 13) and the Attachment of Income Order Rules (Cap. 13 sub. leg. A) made under that section provide for the making of an attachment of income order by the Court of First Instance or District Court.

**26. Recognition of judgment under common law not affected**

The registration of a specified order in a Mainland judgment under this Part 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**

**27. Stay of Hong Kong proceedings when application for registering specified order in Mainland judgment is made**

- (1) This section applies if—
  - (a) a registration application is made in relation to any specified order in a Mainland judgment given in respect of a cause of action; and

- (b) proceedings are pending before a court in Hong Kong (*adjudicating court*) in relation to the same cause of action.
- (2) The applicant for 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 proceedings in relation to the cause of action before it be stayed.
- (4) When the order is made, the proceedings in relation to the cause of action are stayed until the adjudicating court, on the application of a party to the proceedings, orders that the proceedings (or any part of them) be resumed or terminated.
- (5) A party to the proceedings may make an application mentioned in subsection (4) only if the registration application is finally disposed of under this Part.
- (6) For the purposes of subsection (5), a registration application is finally disposed of under this Part when—
  - (a) the Court of First Instance or District Court refuses to make an order under section 11(1); or
  - (b) if the Court of First Instance or District Court makes an order under section 11(1) to register any specified order—
    - (i) the time limit for making an application for setting aside the registration under section 16 has expired and no such application is made; or
    - (ii) an application for setting aside the registration is made under section 16 and the application has been determined under section 17.

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

- (1) Subject to subsections (2) and (3), a party to a matrimonial or family case in relation to which a Mainland judgment was given must not bring in a court in Hong Kong proceedings in relation to the same cause of action in respect of which the judgment was given if—
  - (a) a registration application in relation to any specified order in the judgment is pending; or
  - (b) a specified order or orders in the judgment is registered under section 11(1).
- (2) Subsection (1) does not apply if the proceedings to be brought in a court in Hong Kong are proceedings under Part IIA of the Matrimonial Proceedings and Property Ordinance (Cap. 192).
- (3) If the registration of the specified order or orders mentioned in subsection (1)(b) has been set aside under section 17, that subsection does not prevent a party to the judgment from bringing the proceedings in a court in Hong Kong.

**29. Restriction on proceedings for execution of Mainland judgment other than by way of registration under section 11(1)**

- (1) A court in Hong Kong must not entertain any proceedings other than registration or related proceedings for the recovery of a sum ordered to be paid or the execution of a relief ordered under a Mainland judgment that is given on or after the commencement date of this Ordinance in a matrimonial or family case and is effective in the Mainland.
- (2) For Subsection (1), registration or related proceedings are—
  - (a) proceedings for registration under section 11(1); or

- (b) proceedings for the execution of a registered order.

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## **Part 3**

### **Mainland Divorce Certificate**

#### **Division 1—Application for Recognition and Recognition Order**

##### **30. Application for recognition of Mainland divorce certificate**

- (1) A party to a divorce specified in a Mainland divorce certificate issued on or after the commencement date of this Ordinance may apply to the District Court for an order to have the certificate recognized to the effect that the divorce specified in the certificate is recognized as valid in Hong Kong.
- (2) The application must be accompanied by the prescribed fee.

##### **31. Recognition of Mainland divorce certificate**

- (1) On an application made under section 30 in respect of a Mainland divorce certificate, the District Court may, if it is satisfied that the certificate is valid in the Mainland, order that the certificate be recognized to the effect that the divorce specified in the certificate is recognized as valid in Hong Kong.
- (2) For the purposes of subsection (1), a Mainland divorce certificate is presumed, until the contrary is proved, to be valid in the Mainland if the certificate is notarized in accordance with the law of the Mainland.

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## **Division 2—Setting Aside Recognition Order**

### **32. District Court to specify time limit for setting aside recognition order**

- (1) The District Court must, when making an order under section 31(1) for the recognition of a Mainland divorce certificate, specify the period within which an application for setting aside the order may be made.
- (2) The District Court may extend the period (either as originally fixed or as subsequently extended) within which an application mentioned in subsection (1) may be made.

### **33. Application for setting aside recognition order**

If a Mainland divorce certificate is recognized, a party to the divorce specified in the certificate (other than the party who applied for the recognition) may, within the time limit specified under section 32(1) (or as extended under section 32(2)), apply to the District Court to set aside the order for the recognition of the certificate.

### **34. Grounds on which recognition order must be set aside**

The District Court must, on an application made under section 33, set aside the order for the recognition of a Mainland divorce certificate if it is satisfied that—

- (a) the certificate was obtained by fraud;
- (b) the certificate is invalid; or
- (c) the recognition is manifestly contrary to the public policy of Hong Kong.

**35. Effect of setting aside recognition order**

If an order for the recognition of a Mainland divorce certificate is set aside under section 34, the parties to the divorce specified in the certificate must not make a further application under section 30(1) for an order to have the certificate recognized.

**Division 3—Effect of Recognition**

**36. Recognition order not to take effect before end of setting aside procedure**

An order for the recognition of a Mainland divorce certificate made under section 31(1) takes effect only after—

- (a) the expiry of the period within which an application to set aside the order may be made under section 33; or
  - (b) if an application under section 33 is made during the period mentioned in paragraph (a)—the application has been determined under section 34.
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## **Part 4**

### **Certified Copy of Hong Kong Judgment for Enforcement in Mainland**

#### **37. Hong Kong judgment to which this Part applies**

This Part applies to a Hong Kong judgment given in a matrimonial or family case that is—

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

#### **38. Application for certified copy of Hong Kong judgment**

- (1) Subject to subsection (3), a party to a Hong Kong judgment 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 Final Appeal, Court of Appeal or Court of First Instance—the High Court; or
    - (ii) if the judgment was given by the District Court—the District Court; and
  - (b) be accompanied by the prescribed fee.
- (3) If the execution of a Hong Kong judgment is stayed for any period pending an appeal or for any other reason, an application must not be made under this section in respect of the judgment until the expiry of that period.

**39. Issue of certified copy of Hong Kong judgment and certificate for Hong Kong judgment**

- (1) The High Court or District Court must, on an application made under section 38, issue to the applicant a certified copy of a Hong Kong judgment.
  - (2) When issuing a certified copy of the judgment, the High Court or District Court must also issue to the applicant a certificate—
    - (a) certifying that the judgment is—
      - (i) given in a matrimonial or family case; and
      - (ii) effective in Hong Kong; and
    - (b) containing the particulars, and having annexed to the judgment the documents that may be prescribed by the rules made under section 40.
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## **Part 5**

### **Miscellaneous**

#### **40. 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 order;
- (b) to prescribe the fees payable under this Ordinance;
- (c) to prescribe any matter that under a provision of this Ordinance is to be prescribed by rules made under this section; and
- (c) generally to the better carry out the purposes and provisions of this Ordinance.

#### **41. Amendment of Schedules 1, 2 and 3**

The Secretary for Justice may, by notice published in the Gazette, amend Schedule 1, 2 or 3.

#### **42. Consequential and related amendments**

The enactments specified in Schedule 4 are amended as set out in that Schedule.

## **Schedule 1**

[ss. 3 & 41]

### **Paragraphs 1 to 10, 12, 13 and 14 of Article 3(1)(1) of Arrangement**

#### **(English Translation)**

1. dispute over division of the property of parties to a marriage during the subsistence of the marriage
2. dispute over divorce
3. dispute over property after divorce
4. dispute over invalidity of a marriage
5. dispute over annulment of a marriage
6. dispute over a matrimonial property agreement
7. dispute over custody or maintenance of a child arising from cohabitation
8. dispute over confirmation of parentage
9. dispute over custody or maintenance of a child
10. dispute over spousal maintenance

...

12. dispute over right of guardianship (limited to guardianship of a minor child)
  13. dispute over right of access to a child
  14. application for an order for the protection of a person
-

## **Schedule 2**

[Ss. 2, 24 & 41]

### **Specified Orders in Mainland Judgments**

#### **Part 1**

##### **Care-related Orders**

1. An order in relation to the custody of a child under the age of 18 years
2. An order in relation to the custody of a child, whether or not under the age of 18 years, who cannot live independently
3. An order in relation to the guardianship of a child under the age of 18 years
4. An order for right of access in relation to a child under the age of 18 years
5. An order for the protection of a person from violence in a domestic relationship

#### **Part 2**

##### **Status-related Orders**

1. An order granting a divorce

2. An order declaring that a marriage is invalid
3. An order for the annulment of a marriage
4. An order in relation to the parentage of a person

### **Part 3**

#### **Maintenance-related Orders**

1. An order in relation to the maintenance of a child under the age of 18 years
  2. An order in relation to the maintenance of a child, whether or not under the age of 18 years, who cannot live independently
  3. An order in relation to spousal maintenance
  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 an order for the delivery or transfer of property or payment of a sum of money to, or vesting of property in, one party to the marriage, or a declaration that property belongs to one party to the marriage
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## **Schedule 3**

[ss. 4 & 41]

### **Matrimonial or Family Cases in Hong Kong**

Item	Description
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— <ul style="list-style-type: none"><li>(a) the Guardianship of Minors Ordinance (Cap. 13);</li><li>(b) the Separation and Maintenance Orders Ordinance (Cap. 16); or</li><li>(c) Part II or IIA of the Matrimonial Proceedings and Property Ordinance (Cap. 192)</li></ul>
5.	An order for the transfer or sale of property made under— <ul style="list-style-type: none"><li>(a) the Guardianship of Minors Ordinance (Cap. 13); or</li><li>(b) Part II or IIA of the Matrimonial Proceedings and Property Ordinance (Cap. 192)</li></ul>



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Item	Description
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)
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.	A custody order 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)

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Item	Description
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

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## **Schedule 4**

[s. 42]

### **Consequential and Related Amendments**

#### **Part 1**

#### **Amendments to Attachment of Income Order Rules (Cap. 13 sub. leg. A)**

**1. Rule 2 amended (interpretation)**

**(1) Rule 2—**

**Repeal the definition of *attachment order***

**Substitute**

**“*attachment order* ( )—**

- (a) means an attachment of income order made under—**
  - (i) section 20 of the Guardianship of Minors Ordinance (Cap. 13);**
  - (ii) section 9A of the Separation and Maintenance Orders Ordinance (Cap. 16);**
  - (iii) section 28 of the Matrimonial Proceedings and Property Ordinance (Cap. 192); or**
  - (iv) section 20 of the Guardianship of Minors Ordinance (Cap. 13) as applied by virtue of section 25 of the Mainland Judgments in Matrimonial and Family Cases (Reciprocal**

Recognition and Enforcement) Ordinance  
( of ); and

- (b) includes a variation of an attachment of income order made under rule 9;”.

(2) Rule 2—

**Repeal the definition of *related maintenance order***

**Substitute**

“*related maintenance order* ( ) means any of the following orders, as may be appropriate, the enforcement of which is the subject of an application under these Rules—

- (a) the maintenance order defined in section 2 of the Guardianship of Minors Ordinance (Cap. 13);
- (b) the maintenance order defined in section 2 of the Separation and Maintenance Orders Ordinance (Cap. 16);
- (c) the maintenance order defined in section 2 of the Matrimonial Proceedings and Property Ordinance (Cap. 192);
- (d) a registered Mainland order that is regarded as a maintenance order defined in section 2 of the Guardianship of Minors Ordinance (Cap. 13) under section 25 of the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance ( of );”.

(3) Rule 2—

**Add in alphabetical order**

“**registered Mainland order** (                      ) means an order registered under section 11(1) of the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (    of    );”.

**2. Rule 3 amended (requirements relating to application made by designated payee)**

Rule 3(2)(f)(iii)—

**Repeal**

“or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192)”

**Substitute**

“, section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192) or the registered Mainland order concerned”.

**3. Rule 9 amended (variation of attachment order)**

(1) Rule 9(1)(b), after “order”—

**Add**

“(other than an order mentioned in paragraph (d) of the definition of ***related maintenance order*** in rule 2)”.

(2) Rule 9(3)—

**Repeal paragraph (d)**

**Substitute**

“(d) the case number of the following proceedings—

- (i) for a related maintenance order mentioned in paragraph (d) of the definition of ***related maintenance order*** in rule 2—the proceedings under which the order was registered; or

- (ii) for any other related maintenance order—the proceedings under which the order was made;”.

**4. Schedule amended (forms)**

- (1) Form 1, after “(Cap. 192)”—

**Add**

“/section 20 of the Guardianship of Minors Ordinance (Cap. 13) as applied by virtue of section 25 of the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance ( of )”.

- (2) Form 4, before “, the Maintenance Payer”—

**Add**

“/by a maintenance order in a Mainland judgment registered by an order of the Court dated .....”.

## **Part 2**

### **Amendment to Matrimonial Causes Ordinance (Cap. 179)**

**5. Section 61A added**

After section 61—

**Add**

**“61A. Non-application to divorces in Mainland**

- (1) Sections 55, 56, 57 and 58 do not apply in relation to divorces obtained by means of judicial or other proceedings in the Mainland on or after the commencement date of the Mainland Judgments in

Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (   of   ).

- (2) Section 61 does not apply in relation to divorce the validity of which is recognized by virtue of the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (   of   ).
- (3) In this section—
- Mainland*** (   ) means the part of China other than Hong Kong, Macau and Taiwan.”.

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## Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Rules

(Made by the Chief Judge under section 40 of the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (                      of                      ))

### Part 1

#### Preliminary

##### 1. Commencement

These rules come into operation on the day appointed for the commencement of the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (                      of                      ).

##### 2. Interpretation

(1) In these rules—

**Court** (                      ) means the Court of First Instance or District Court;

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

**registration** (                      ), in relation to a specified order in a Mainland judgment, means the registration of the order under section 11(1) of the Ordinance.

(2) In these rules—

(a) a reference to an Order and rule, prefixed by the letters “RHC”, is a reference to that Order and rule in the Rules of the High Court (Cap. 4 sub. leg. A); and

- (b) a reference to an Order and rule, prefixed by the letters “RDC”, is a reference to that Order and rule in the Rules of the District Court (Cap. 336 sub. leg. H).

**3. Application of rules of court to proceedings under Ordinance (except execution proceedings)**

Except as provided by these rules—

- (a) 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 of First Instance other than proceedings for the execution of a registered order; and
- (b) the practice and procedure under the Rules of the District Court (Cap. 336 sub. leg. H) apply, with necessary modifications, in relation to all proceedings under the Ordinance before the District Court other than proceedings for the execution of a registered order.

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

See Part 4 for the practice and procedure that apply to proceedings for the execution of a registered order.

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## **Part 2**

# **Registration of Mainland Judgments in Matrimonial or Family Cases**

## **Division 1—Application**

### **4. Registration application**

- (1) A registration application may be made ex parte to the District Court.
- (2) Despite subrule (1), the District Court may direct the registration application be made by way of originating summons.
- (3) An originating summons under this rule must be in Form No. 10 in Appendix A of the Rules of the District Court (Cap. 336 sub. leg. H).
- (4) The registration application must be supported by an affidavit made in compliance with Division 2.

## **Division 2—Affidavit in Support**

### **5. Affidavit in support of registration application: General**

- (1) An affidavit in support of a registration application must exhibit the following documents—
  - (a) a copy of the identity card of the applicant or, if the applicant is not a holder of an identity card, a copy of the identification document of the applicant notarized or otherwise duly authenticated in accordance with the law of the place in which the document was issued;

- (b) a copy of the Mainland judgment concerned duly sealed by the original Mainland court; and
  - (c) a certificate issued by the original Mainland court certifying that the judgment is given in a matrimonial or family case and is effective.
- (2) The affidavit must state the following particulars, so far as known to the deponent, in relation to the applicant and each of the other parties to the proceedings in which the judgment is given—
  - (a) name;
  - (b) the usual or last known place of abode;
  - (c) 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
  - (d) a means of contact.
- (3) The affidavit must also state—
  - (a) all specified orders in the judgment; and
  - (b) whether the application seeks to register all of the specified orders and, if not, the ones that are sought to be registered.
- (4) The deponent must state in the affidavit that, to the best of the deponent's information or belief, the judgment—
  - (a) is enforceable in the Mainland;
  - (b) is—
    - (i) a judgment given by the Supreme People's Court;
    - (ii) a judgment of the second instance given by a Higher People's Court or an Intermediate People's Court; or

- (iii) a judgment of the first instance given by a Higher 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; and
  - (c) is, or is not, given according to the trial supervision procedure of the Mainland.
- (5) The affidavit must be accompanied by evidence relevant to the enforceability of the judgment.
- (6) The deponent must also state in the affidavit that, to the best of the deponent's information or belief—
  - (a) the judgment is a Mainland judgment given in a matrimonial or family case;
  - (b) the judgment is not one given by a court of a place outside the Mainland that is recognized in the Mainland under the law of the Mainland; and
  - (c) the order or orders sought to be registered is or are specified order or orders.
- (7) The deponent must also state in the affidavit, to the best of the deponent's information or belief of—
  - (a) whether proceedings are pending before a court in Hong Kong in relation to the same cause of action as that in respect of which the order sought to be registered was made;

- (b) whether the specified order or orders sought to be registered is or are subject to section 9 of the Ordinance and, if so, whether that section is complied with; and
  - (c) that, if the specified order or orders were registered, the registration would not be, or be liable to be, set aside under section 17 of the Ordinance.
- (8) The affidavit must also specify—
  - (a) to the extent that they relate to a specified order sought to be registered—
    - (i) the interest that, under the law of the Mainland, has become due under the judgment up to the time of registration; and
    - (ii) the costs duly certified by the original Mainland court; and
  - (b) the fine or charge payable by a party to another party to the proceedings in which the judgment was given for failing to comply with a specified order within the time stipulated in the judgment.
- (9) If the interest, costs, fine or charge mentioned in subrule (8) is specified in the affidavit, the affidavit must be accompanied by evidence of the law of the Mainland under which such interest, costs, fine or charge has become due.

**6. Affidavit in support of registration application: care-related order**

- (1) This rule applies to an affidavit in support of a registration application that seeks to register a care-related order.
- (2) The deponent of the affidavit must also state in the affidavit, to the best of the deponent's information or belief—



- (a) that the applicant in relation to the registration application is entitled to enforce the order in the Mainland;
- (b) whether there has been a non-compliance with the order; and
- (c) if there has been a non-compliance with the order—the date on which the non-compliance first occurred and whether any action has been taken to enforce the order and, if so, the details of the enforcement.

**7. Affidavit in support of registration application: maintenance-related order**

- (1) This rule applies to an affidavit in support of a registration application that seeks to register a maintenance-related order requiring the payment of a sum of money or the performance of an act.
- (2) Unless subrule (3) applies, the deponent of the affidavit must also state in the affidavit, to the best of the deponent's information or belief—
  - (a) that the applicant in relation to the registration application is entitled to enforce the order in the Mainland;
  - (b) whether any action has been taken to enforce the order and, if so, the details of the enforcement;
  - (c) the details of the property of the party against whom the judgment is enforceable under the law of the Mainland and the financial status of the party (as the case may require);
  - (d) the date under the order by which the payment or act is required to be made or performed; and

- (e) the following (as the case may require)—
  - (i) the amount that remains unpaid as at the date of the application;
  - (ii) a description of the act, or the part of the act, that remains unperformed as at the date of the application.
- (3) If the maintenance-related order requires a payment or an act to be made or performed periodically, the deponent of the affidavit must also state in the affidavit, to the best of the deponent's information or belief—
  - (a) that the applicant in relation to the registration application is entitled to enforce the order in the Mainland;
  - (b) whether any action has been taken to enforce the order and, if so, the details of the enforcement;
  - (c) the details of the property of the party against whom the judgment is enforceable under the law of the Mainland and the financial status of the party (as the case may require);
  - (d) the date under the order by which each payment or act is required to be made or performed and the amount of each payment or a description of each act; and
  - (e) the following (as the case may require)—
    - (i) which of those payments has not been fully paid and, for each such payment, the amount that remains unpaid as at the date of the application;
    - (ii) which of those acts has not been fully performed and, for each such act, a description of the act, or the part of the act, that remains unperformed as at the date of the application.

**8. Affidavit in support of registration application: judgment given in absence of party at trial**

- (1) This rule applies to an affidavit in support of a registration application that seeks to register a specified order in a Mainland judgment that was given in the absence of a party at the trial concerned.
- (2) The deponent of the affidavit 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 has been summoned according to the law of the Mainland;
  - (b) that the judgment states that the absent party has been so summoned;
  - (c) 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 party has been summoned according to the law of the Mainland.

**9. Affidavit in support of registration application where specified orders were registered previously**

- (1) This rule applies if—
  - (a) the Court has previously on a registration application ordered any, but not all, of the specified orders in a Mainland judgment to be registered (*previous registration order*); and
  - (b) the registration has not been set aside under section 17 of the Ordinance.
- (2) An affidavit in support of a subsequent registration application made in respect of any other specified order or

orders in the judgment must also exhibit a copy of the previous registration order.

### **Division 3—Security for Costs**

#### **10. Security for costs**

The Court may order the applicant for a registration application made in respect of any specified order to give security for the costs of—

- (a) the application; and
- (b) any application under section 16 of the Ordinance to set aside the registration of the specified order.

### **Division 4—Registration**

#### **11. Order for registration**

- (1) An order for the registration of any specified order in a Mainland judgment must be drawn up by or on behalf of the applicant for the registration application.
- (2) The order must—
  - (a) state the period within which an application may be made under section 16 of the Ordinance to set aside the registration; and
  - (b) contain a notification that execution on the specified order or orders will not be issued until after the expiry of that period.
- (3) Except where the order is made on a registration application by way of an originating summons, the order is not required to be served on any other party to the proceedings in which the judgment was given.

**12. Registers of specified orders**

- (1) The Registrar of the Court of First Instance must keep in the Registry of that Court a register of specified orders registered under section 11(1) of the Ordinance by an order made by that Court.
- (2) The Registrar of the District Court must keep in the Registry of that Court a register of specified orders registered under section 11(1) of the Ordinance by an order made by that Court.
- (3) The register must contain the particulars of any execution issued on a specified order.

**13. Notice of registration**

- (1) If an order for the registration of any specified order in a Mainland judgment is made under section 11(1) of the Ordinance, the applicant for the registration application concerned must serve a notice of registration of the specified order on all other parties to the proceedings in which the judgment was given—
  - (a) by delivering it to those parties personally;
  - (b) by sending it to those parties at their usual or last known place of abode; or
  - (c) in such other way as the Court may direct.
- (2) Service of the notice of registration out of jurisdiction is permissible without leave, and RHC Order 11, rules 5, 5A, 6, 8 and 8A or RDC Order 11, rules 5, 5A, 6, 8 and 8A (as may be applicable) apply in relation to the notice as if the notice were a writ.
- (3) The notice of registration must set out—

- (a) the full particulars of the registered order or orders and the order for registration;
- (b) the name and address of the applicant or of the applicant's solicitor or agent on whom, and at which, any summons issued by the other parties to the proceedings may be served;
- (c) the right of the other parties to the proceedings to apply to have the registration set aside; and
- (d) the period within which an application to set aside the registration may be made.

### **Division 5—Setting Aside Registration**

#### **14. Application to set aside registration**

- (1) An application under section 16 of the Ordinance to set aside the registration of a specified order 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 original applicant, impose any terms (whether as to giving security or otherwise) it considers appropriate as a condition of the further conduct of the application under section 16 of the Ordinance if, having regard to all the circumstances of the case, it considers it just to do so.
- (4) In this rule—  
*original applicant* ( ), in relation to a specified order in a Mainland judgment the registration of which is the subject of

an application under section 16 of the Ordinance, means the person who made the registration application concerned.

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## **Part 3**

### **Recognition of Mainland Divorce Certificates**

#### **15. Application for recognition**

- (1) An application under section 30(1) of the Ordinance for an order to have a Mainland divorce certificate recognized to the effect that the divorce specified in the certificate is recognized as valid in Hong Kong may be made ex parte to the District Court.
- (2) Despite subrule (1), the District Court may direct the application be made by way of originating summons.
- (3) An originating summons under this rule must be in Form No. 10 in Appendix A of the Rules of the District Court (Cap. 336 sub. leg. H).
- (4) The application must be supported by an affidavit made in compliance with rule 16.

#### **16. Affidavit in support of application for recognition of Mainland divorce certificate**

An affidavit in support of an application under section 30(1) of the Ordinance must—

- (a) exhibit the following documents—
  - (i) a copy of the identity card of the applicant or, if the applicant is not a holder of an identity card, a copy of the identification document of the applicant notarized or otherwise duly authenticated in accordance with the law of the place in which the document was issued; and



- (ii) a copy of the Mainland divorce certificate notarized in accordance with the law of the Mainland;
- (b) state, so far as known to the deponent, the name and the usual or last known place of abode of the applicant and the other party to the divorce specified in the certificate; and
- (c) state that, to the best of the deponent's information or belief, the certificate is valid in the Mainland.

**17. Security for Costs**

The Court may order the applicant of an application under section 30(1) of the Ordinance to give security for the costs of—

- (a) the application; and
- (b) any proceedings that may be brought by an application under section 33 of the Ordinance to set aside the order for recognition granted on the application under section 30(1) of the Ordinance.

**18. Order for recognition**

- (1) An order for the recognition of a Mainland divorce certificate must be drawn up by or on behalf of the applicant for the application under section 30(1) of the Ordinance.
- (2) Except where the order is made on an application by way of an originating summons, the order is not required to be served on the other party to the divorce specified in the certificate.

**19. Notice of order for recognition**

- (1) If an order for the recognition of a Mainland divorce certificate is made under section 31(1) of the Ordinance, the applicant for the application under section 30 of the Ordinance

concerned must serve a notice of the order of recognition on the other party to the divorce specified in the certificate (*respondent*)—

- (a) by delivering it to the respondent personally;
  - (b) by sending it to the respondent at the respondent's usual or last known place of abode; or
  - (c) in such other way as the Court may direct.
- (2) Service of the notice of recognition out of jurisdiction is permissible without leave, and RHC Order 11, rules 5, 5A, 6, 8 and 8A or RDC Order 11, rules 5, 5A, 6, 8 and 8A (as may be applicable) apply in relation to the notice as if the notice were a writ.
- (3) The notice of order for recognition must set out—
- (a) the full particulars of the Mainland divorce certificate and the order for recognition;
  - (b) the name and address of the applicant or of the applicant's solicitor or agent on whom, and at which, any summons issued by the respondent may be served;
  - (c) the right of the respondent to apply to have the order for recognition set aside; and
  - (d) the period within which an application to set aside the order for recognition may be made.

## **20. Application to set aside order for recognition**

- (1) An application under section 33 of the Ordinance to set aside the order for recognition of a Mainland divorce certificate 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 original applicant, impose any terms (whether as to giving security or otherwise) it considers appropriate as a condition of the further conduct of the application under section 33 of the Ordinance if, having regard to all the circumstances of the case, it considers it just to do so.
- (4) In this rule—
- original applicant*** ( ), in relation to a Mainland divorce certificate the recognition of which is the subject of an application under section 33 of the Ordinance, means the person who made the application concerned under section 30(1) of the Ordinance concerned.
-

## **Part 4**

### **Execution of Registered Order**

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

Section 22 of the Ordinance provides that an action to enforce a registered order may be taken only after the expiry of the period specified in that section.

#### **21. Practice and procedure that apply to execution of registered orders**

- (1) 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 order.
- (2) If the registered order requires the payment of money to a person, rules 86, 87 and 88 of the Matrimonial Causes Rules (Cap. 179 sub. leg. A) apply, with necessary modifications, in relation to the registered order as if it were an order for the payment of money in relation to which those rules apply.
- (3) Rule 90 of the Matrimonial Causes Rules (Cap. 179 sub. leg. A) applies, with necessary modifications, in relation to an order of committal in proceedings for the enforcement of a registered order as if it were an order of committal in matrimonial proceedings in relation to which that rule applies.

#### **22. Issue of execution**

- (1) A party wishing to issue execution on a registered order must produce to the Registrar—
  - (a) an affidavit of service of the notice of registration of the order under rule 13;

- (b) an affidavit mentioned in subrule (2); and
  - (c) any order made by the Court in relation to the registered order.
- (2) The affidavit must state—
  - (a) the registered order in relation to which the party seeks 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
    - (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 registered order has not been complied with; and
    - (ii) whether any action has been taken to enforce the order further to what has been stated in the affidavit in support of the registration application and, if so, the details of the enforcement.
- (3) In subrule (1)—  
**Registrar** ( )—
  - (a) in relation to a registered order for which execution is sought in the Court of First Instance—means the Registrar of the High Court, and includes a deputy registrar and an assistant registrar of the High Court; and
  - (b) in relation to a registered order for which execution is sought in the District Court—means the Registrar of the District Court, and includes a deputy registrar and an assistant registrar of the District Court.

## Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Rules

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## **Part 5**

### **Certified Copies and Certificate of Hong Kong Judgments**

#### **23. Interpretation for Part 5**

In this Part—

**Registrar** (            )—

- (a) in relation to a judgment given by the Court of Final Appeal, Court of Appeal or Court of First Instance—means the Registrar of the High Court, and includes a deputy registrar and an assistant registrar of the High Court; and
- (b) in relation to a judgment given by the District Court—means the Registrar of the District Court, and includes a deputy registrar and an assistant registrar of the District Court;

**relevant order** (    ) means an order specified in Schedule 3 to the Ordinance.

#### **24. Application for certified copy of Hong Kong judgment**

- (1) An application under section 38(1) of the Ordinance for a certified copy of a Hong Kong judgment given in relation to a matrimonial or family case by the Court of Final Appeal, Court of Appeal, Court of First Instance or District Court must be made *ex parte* to the Registrar on affidavit.
- (2) The affidavit must—
  - (a) give the particulars of the proceedings in which the judgment was obtained;

- (b) state that the judgment was given in relation to a matrimonial or family case in Hong Kong;
- (c) state all relevant orders granted or made in the matrimonial or family case;
- (d) if the judgment relates to a relevant order requiring the payment of a sum of money or the performance of an act, then, unless paragraph (e) applies, state the following—
  - (i) the date under the order by which the payment or act is required to be made or performed; and
  - (ii) the following (as the case may require)—
    - (A) the amount that remains unpaid as at the date of the application;
    - (B) a description of the act, or the part of the act that remains unperformed as at the date of the application;
- (e) if the judgment relates to a relevant order requiring the periodical payment of a sum of money, or an act to be performed periodically, state the following—
  - (i) the date under the order by which each payment or act is required to be made or performed and the amount of each payment or a description of each act; and
  - (ii) the following (as the case may require)—
    - (A) which of those payments has not been fully made and, for each such payment, the amount that remains unpaid as at the date of the application;
    - (B) which of those acts has not been fully performed and, for each such act, a



description of the act, or the part of the act, that remains unperformed as at the date of the application;

- (f) state whether any action has been taken to enforce the judgment and, if so, the details of the enforcement;
- (g) show that the judgment is not subject to any stay of execution;
- (h) 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
- (i) if applicable, state the rate at which the judgment carries interest (if any).

## **25. Certified copy of Hong Kong judgment**

- (1) This rule applies if, on an application mentioned in rule 24, the Registrar issues a certified copy under section 39(1) of the Ordinance in respect of a Hong Kong judgment given in relation to a matrimonial or family case.
- (2) The certified copy must—
  - (a) be an office copy sealed with the seal of—
    - (i) for a judgment given by the Court of Final Appeal, Court of Appeal or Court of First Instance—the High Court; or
    - (ii) for a judgment given by the District Court—the District Court; and

- (b) be indorsed with a certificate signed by the Registrar certifying that the copy is—
  - (i) a true copy of a judgment obtained in the Court of Final Appeal, Court of Appeal, Court of First Instance or District Court; and
  - (ii) issued under section 39(1) of the Ordinance.

**26. Certificate for Hong Kong judgment**

- (1) This rule applies if, on an application mentioned in rule 24, the Registrar issues a certificate under section 39(2) of the Ordinance in respect of a Hong Kong judgment given in relation to a matrimonial or family case.
- (2) The following documents must be annexed to the certificate—
  - (a) a copy of the petition, originating application, 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) what pleadings, if any, were served;
  - (b) either—
    - (i) the way in which the originating process was served on the other party or parties to the case; or
    - (ii) that the other party or all other parties acknowledged service of the process;
  - (c) all relevant orders granted or made in the matrimonial or family case;
  - (d) if the judgment relates to a relevant order requiring the payment of a sum of money or the performance of an act, then, unless paragraph (e) applies—the amount that

- remains unpaid, or the act that remains unperformed, as at the date of the application, as stated in the affidavit made in compliance with rule 24(2)(d);
- (e) if the judgment relates to a relevant order requiring the periodical payment of a sum of money or an act to be performed periodically—the amount of each payment that remains unpaid, or each act that remains unperformed, as at the date of the application, as stated in the affidavit made in compliance with rule 24(2)(e);
  - (f) the date from which the judgment takes effect;
  - (g) whether any action has been taken to enforce the judgment and, if so, the details of the enforcement;
  - (h) 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;
  - (i) whether any notice of appeal against the judgment has been entered;
  - (j) the rate at which the judgment carries interest (if any); and
  - (k) such other particulars as it 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 judgment given by the Court of Final Appeal, Court of Appeal or Court of First Instance—the High Court; or

- (ii) for a judgment given by the District Court—the District Court.

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