

MAINLAND JUDGMENTS (RECIPROCAL ENFORCEMENT) BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Justice

Clause

Amendment Proposed

Long title

- (a) By deleting “Make provisions for” and substituting “Give effect to the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region pursuant to Choice of Court Agreements between Parties Concerned made between the Supreme People’s Court of the People’s Republic of China and the Government of the Hong Kong Special Administrative Region (as amended from time to time), and for that purpose to make provisions for”.
- (b) By deleting “which afford reciprocal treatment to judgments given in Hong Kong;” and substituting “and”.
- (c) In the English text, by adding “to provide” before “for matters connected”.
- (d) In the Chinese text, by deleting “；並利便” and substituting “，及利便”.
- (e) In the Chinese text, by deleting “在內地執行” and substituting “在內地強制執行”.

2(1)

By deleting the definition of “recognized Basic People’s Court” and substituting –

““recognized Basic People’s Court” (認可基層人民法院) means any Basic People’s Court which is specified in a list published in the Gazette under section 25(1) from time to

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time;”.

2(1) By adding –

““chosen court” (選用法院) means the court or any of the courts specified in a choice of Mainland court agreement or choice of Hong Kong court agreement, as the case may be, as the court to determine a dispute to which the agreement applies;”.

2 By deleting subclause (2).

3(1) By deleting “designating a court in Hong Kong” and substituting “specifying the courts in Hong Kong or any of them as the court”.

3(2) By deleting “designating a court in the Mainland” and substituting “specifying the courts in the Mainland or any of them as the court”.

5(2) By deleting paragraph (a) and substituting –

“(a) the judgment is given on or after the date of the commencement of this Ordinance by –

- (i) a chosen court which is a designated court;
- (ii) a designated court upon a transfer of the case under the law of the Mainland from a chosen court;
- (iii) a designated court upon an appeal against a judgment of the case given by –
 - (A) a chosen court; or
 - (B) a court to which the case has been transferred under the law of the Mainland from a chosen court; or
- (iv) a designated court upon a retrial of the case which has been tried in –

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- (A) a chosen court; or
- (B) a court to which the case has been transferred under the law of the Mainland from a chosen court;”.

5(2) In paragraph (b), by deleting “judgment is given pursuant to a choice of Mainland court agreement” and substituting “relevant choice of Mainland court agreement is”.

5(2) In paragraph (e), in the Chinese text, by deleting the comma at the end and substituting a full stop.

5(2) In the Chinese text, by deleting “而有關的判定債權人提出證明令原訟法庭信納下述規定已獲符合” and substituting “則在有關判定債權人提出證明令原訟法庭信納若干規定已獲符合的情況下，原訟法庭須命令將有關內地判決按照本條例登記，該等規定為”.

5(2) In the Chinese text, by deleting “則原訟法庭須命令將該判決按照本條例登記。”.

6(1) By deleting paragraph (d) and substituting –

“(d) it is a judgment given in a retrial by a designated court of a level higher than the court whose judgment has given rise to the retrial.”.

7(1) By deleting everything after “shall be” and substituting “2 years.”.

7 By deleting subclause (2) and substituting –

“(2) The time limit specified under subsection (1) shall be calculated –

(a) where a period for performance of the

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Mainland judgment has been specified in the judgment, from the last day of the period; or

(b) in any other case, from the date from which the judgment takes effect.”.

14(1) By deleting “A” and substituting “Subject to section 15, a”.

17(1) By deleting “may specify” and substituting “shall specify”.

18(1) By deleting “the Court of First Instance shall set aside the registration of the judgment if the party has proved to the satisfaction of the Court of First Instance” and substituting “the registration of the judgment shall be set aside if the Court of First Instance is satisfied”.

18(1) In paragraph (c), by deleting “choice of Mainland court agreement pursuant to which the judgment was given” and substituting “relevant choice of Mainland court agreement”.

18(1) By deleting paragraph (f) and substituting –

“(f) the judgment debtor who did not appear in the original court to defend the proceedings –

(i) was not summoned to appear according to the law of the Mainland; or

(ii) was so summoned but was not given sufficient time to defend the proceedings according to the law of the Mainland;”.

18(1) In paragraph (h), by adding “or an arbitral award on the same cause of action between the parties has been made by an arbitration body in Hong Kong” after “Hong Kong”.

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- 18(1) In paragraph (i), by deleting “has been made by an arbitration body” and substituting “on the same cause of action between the parties has been made by an arbitration body in a place outside Hong Kong”.
- 18(1) In paragraph (k), in the Chinese text, by deleting the comma at the end and substituting a full stop.
- 18(1) In the Chinese text, by deleting “原訟法庭須將該判決的登記作廢。”.
- 19 By deleting “the party has proved to the satisfaction of the Court of First Instance” and substituting “the Court of First Instance is satisfied”.
- 21 By deleting subclause (1) and substituting –
- “(1) Where a judgment creditor intends to enforce in the Mainland a Hong Kong judgment under which a sum of money is payable (not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty) and the judgment is given on or after the date of the commencement of this Ordinance by –
- (a) the Court of Final Appeal or the High Court which is a chosen court;
 - (b) the Court of Final Appeal or the High Court upon a transfer of the case under the law of Hong Kong from a chosen court; or
 - (c) the Court of Final Appeal or the High Court upon an appeal against a judgment of the case given by –
 - (i) a chosen court; or
 - (ii) a court to which the case has been transferred under the law of Hong Kong from a chosen court,

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the High Court shall, on an application made by the judgment creditor and on payment of such fee as may be prescribed by the rules of court made under section 23(1), issue to the judgment creditor a certified copy of the judgment.”.

21 By deleting subclause (2) and substituting –

“(2) Where a judgment creditor intends to enforce in the Mainland a Hong Kong judgment under which a sum of money is payable (not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty) and the judgment is given on or after the date of the commencement of this Ordinance by –

(a) the District Court which is a chosen court;
or

(b) the District Court upon a transfer of the case under the law of Hong Kong from a chosen court,

the District Court shall, on an application made by the judgment creditor and on payment of such fee as may be prescribed by the rules of court made under section 23(2), issue to the judgment creditor a certified copy of the judgment.”.

25 In the heading, by deleting “**recognized**”.

25(1) By deleting “the recognized Basic People’s Courts” and substituting “Basic People’s Courts for the purposes of this Ordinance”.

New By adding –

**“25A. Special provisions for chosen courts
becoming or ceasing to be recognized
Basic People’s Courts**

(1) If any chosen court was not a recognized Basic People’s Court at the date of the choice of Mainland court

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agreement, the chosen court shall not be regarded as a recognized Basic People's Court for the purposes of this Ordinance even though the chosen court has subsequently become a recognized Basic People's Court.

(2) If, in relation to any Mainland judgment, any chosen court was a recognized Basic People's Court at the date of the choice of Mainland court agreement and it remained as such at the date of the judgment, the chosen court shall be regarded as a recognized Basic People's Court for the purposes of this Ordinance even though the chosen court has subsequently ceased to be a recognized Basic People's Court."

Schedule 2,
section 2

In the proposed Order 71A, in rule 1, in the definition of "choice of Mainland court agreement", "judgment creditor", "judgment debtor", "Mainland", "Mainland judgment", "original court" and "registered judgment", by deleting "2(1)" and substituting "2".

Schedule 2,
section 2

In the proposed Order 71A, in rule 1, by deleting the definition of "identity card".

Schedule 2,
section 2

In the proposed Order 71A, in rule 3(1)(a)(ii), by deleting everything after "copy of the" and substituting "relevant choice of Mainland court agreement;".

Schedule 2,
section 2

In the proposed Order 71A, by deleting rule 3(1)(a)(iv) and substituting –

“(iv) where the judgment creditor is a body of persons, the documents specified for the purposes of this sub-subparagraph in paragraph (2);”.

Schedule 2,
section 2

In the proposed Order 71A, by deleting rule 3(2) and substituting –

“(2) The documents specified for the purposes of

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paragraph (1)(a)(iv) are –

- (a) if the judgment creditor is a body of persons incorporated, formed or established under the law of Hong Kong, a verified or certified or otherwise duly authenticated copy of its certificate of incorporation or similar documents;
- (b) if the judgment creditor is a body of persons incorporated, formed or established under the law of any place other than Hong Kong, a verified or certified or otherwise duly authenticated copy of documents stating that its incorporation, formation or establishment was in accordance with the law of the place where it was so incorporated, formed or established.”.

Schedule 2,
section 2

In the proposed Order 71A, in rule 11(1), by deleting “In the case” and substituting “Subject to paragraph (2), in the case”.

Schedule 2,
section 2

In the proposed Order 71A, by deleting rule 11(2) and substituting –

“(2) Where –

- (a) the Court has under section 5(2) of the Ordinance ordered a part of a Mainland judgment to be registered; and
- (b) the registration has not been set aside under section 18 or 19 of the Ordinance,

then notwithstanding rule 3, any application subsequently made for registration of any other part of the judgment under section 5(1) of the Ordinance shall be supported by an affidavit specified for the purposes of this paragraph in

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paragraph (3).

(3) An affidavit specified for the purposes of paragraph (2) shall –

- (a) cite the Mainland judgment;
- (b) state to the best of the information or belief of the deponent –
 - (i) that the sum of money ordered to be paid under the part of the judgment sought to be registered under the application is due; and
 - (ii) any other information relevant to the application; and
- (c) exhibit a copy of the last order made by the Court under section 5(2) of the Ordinance for registration of any other part of the judgment.”.

Schedule 2,
section 2

In the proposed Order 71B, in rule 1, in the definition of “choice of Hong Kong court agreement”, by deleting “2(1)” and substituting “2”.

Schedule 2,
section 2

In the proposed Order 71B, in rule 1, in the definition of “Mainland”, by deleting “2(1)” and substituting “2”.

Schedule 2,
section 2

In the proposed Order 71B, in rule 2(2)(a), by deleting everything after “copy of the” and substituting “relevant choice of Hong Kong court agreement;”.

Schedule 2

By deleting the cross-heading “**Foreign Judgments (Restrictions on Recognition and Enforcement) Ordinance**” immediately before section 3.

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- Schedule 2 By deleting section 3.
- Schedule 2, section 4 In the proposed rule 6(1) of Order 42, in the English text, by deleting “in the Court” and substituting “the Court”.
- Schedule 2, section 4 In the proposed rule 6(2)(a) of Order 42, by deleting everything after “copy of the” and substituting “relevant choice of Hong Kong court agreement;”.
- Schedule 2, section 4 In the proposed rule 6(6) of Order 42, in the definition of “choice of Hong Kong court agreement”, by deleting “2(1)” and substituting “2”.
- Schedule 2, section 4 In the proposed rule 6(6) of Order 42, in the definition of “Mainland”, by deleting “2(1)” and substituting “2”.

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