

For information

**Legislative Council Panel on
Administration of Justice and Legal Services**

**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**

PURPOSE

This paper informs Members that the Government signed the Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region (“**Arrangement**”) with the Supreme People’s Court (“**SPC**”) on 20 June 2017.

BACKGROUND

2. Mainland judgments on matrimonial and family matters are generally not recognized and enforceable in Hong Kong¹. Neither does Mainland law expressly provide for the recognition and enforcement of Hong Kong judgments on matrimonial and family matters in the Mainland.

3. In view of the increasing number of cross-boundary marriages and related matrimonial matters, there exists a pressing need to establish a bilateral arrangement between Hong Kong and the Mainland to provide for reciprocal

¹ The exceptions include non-Hong Kong divorces recognised 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 also expressly excluded from the scope of 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 (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), signed in July 2006 and took effect as from August 2008.

recognition and enforcement of civil judgments on matrimonial and family matters.

4. 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. It will also enhance the legal co-operation and juridical relations between Hong Kong and the Mainland in civil and commercial matters.

5. The Government previously briefed Members on the proposal regarding the Arrangement in May 2011, June 2016, December 2016 and May 2017.

THE ARRANGEMENT

6. Pursuant to several rounds of discussions between the Government and the SPC, the two sides have signed the Arrangement as attached at the Annex on 20 June 2017 in Hong Kong.

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

(a) Scope

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

- (i) decrees absolute of divorce;
- (ii) decrees absolute of nullity;
- (iii) orders for maintenance pending suit;
- (iv) maintenance orders, including orders for periodical payments and payment of a lump sum;

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

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

- (i) division of the property of parties to a marriage during the subsistence of the marriage;
- (ii) dissolution of a marriage (which may also involve issues on division of property and custody);
- (iii) disputes on (1) the division of property not divided at the time of the divorce; (2) the division of property discovered after divorce; or (3) the performance of an agreement made during or at the time of the divorce on the division of property;
- (iv) validity of a marriage;
- (v) annulment of a marriage;
- (vi) disputes on an agreement made by the parties to a marriage (including one made prior to the marriage) on maintenance and the division of property including during the subsistence of the marriage;
- (vii) disputes on custody of a child between cohabitantes;
- (viii) determination of parentage;
- (ix) disputes on custody of a child;

- (x) disputes on the duty to maintain the other party to a marriage;
- (xi) order for adoption of a child;
- (xii) disputes relating to guardianship of parents over a child;
- (xiii) disputes on the rights of access to a child;
- (xiv) protection orders in situations of domestic violence.

(b) Divorce certificates under administrative procedures

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

(c) Property Adjustment

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

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

(d) Power of variation of maintenance orders

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

(e) Safeguards

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

judgment -

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

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

(f) Level of courts covered

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

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

(g) Enforceability and finality of judgments

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

19. In respect of the Mainland, this means -

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

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

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

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

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

(i) Commencement

23. The Arrangement will come into effect after both sides have completed their respective internal procedures. Specifically it will be implemented in the Mainland by way of a judicial interpretation and in Hong Kong by way of legislation. The Arrangement does not have any retrospective effect.

PUBLIC CONSULTATION

24. In June 2016, the Government conducted a public consultation to invite views on the Arrangement from the community, including the legal profession and other interested parties. At the end of the consultation, the Government received 21 submissions, including those from the professional bodies of the legal and dispute resolution sectors, social welfare organisations and academics. On the whole, most of the respondents supported the proposed conclusion of an arrangement with the Mainland.

25. Specifically on the scope of the Arrangement, most of the respondents supported that the Arrangement should cover divorce decrees, maintenance orders (including orders for periodical payment and lump sum payment for spouse or children born in or out of wedlock), custody orders relating to children to facilitate mutual assistance between the two places for the return of children who have been wrongfully removed as well as “divorce certificates” obtained in the Mainland.

26. Following our discussions with the SPC held after the consultation and the AJLS Panel meeting in December 2016, certain stakeholders, including the Hong Kong Bar Association, the Law Society of Hong Kong and the Hong Kong Family Law Association, were further consulted on various issues arising, including the scope of the Arrangement, the safeguards, as well as the enforceability and finality of judgments to be covered under the Arrangement. The response of these stakeholders was positive.

IMPLEMENTATION

27. As legislation is required to implement the Arrangement in Hong Kong, corresponding legislative proposals will be prepared as soon as possible for consultation with stakeholders, with a view that the legislative proposals be introduced into the Legislative Council before the end of 2018.

Department of Justice
20 June 2017