

**MAINLAND JUDGMENTS (RECIPROCAL
ENFORCEMENT) BILL**

CONTENTS

Clause	Page
--------	------

PART 1

PRELIMINARY

1.	Short title and commencement	C109
2.	Interpretation.....	C109
3.	Meaning of “choice of Hong Kong court agreement” and “choice of Mainland court agreement”	C111
4.	Severability of choice of Hong Kong court agreement and choice of Mainland court agreement.....	C113

PART 2

**APPLICATION FOR REGISTRATION IN HONG KONG OF
MAINLAND JUDGMENTS**

5.	Application for registration of Mainland judgments.....	C113
6.	Finality of Mainland judgments	C115
7.	Time limit for application for registration of Mainland judgments	C115
8.	Application fee.....	C117
9.	Cases in which only some provisions of Mainland judgments are registrable.....	C117
10.	Mainland judgments partly satisfied.....	C117
11.	Mainland judgments expressed in currency other than Hong Kong currency.....	C117
12.	Interest, costs, etc., to be included in registration of Mainland judgments	C119
13.	Cases in which Mainland judgments are required to be performed in stages	C119

Clause	Page
--------	------

PART 3

EFFECT OF REGISTRATION

14.	Effect of registration.....	C121
15.	Registered judgments not to be enforced under certain circumstances	C121
16.	Recognition of Mainland judgments	C121

PART 4

SETTING ASIDE OF REGISTRATION OF REGISTERED JUDGMENTS

17.	Time limit for setting aside registration of registered judgments.....	C123
18.	Cases in which registration of registered judgments shall be set aside	C123
19.	Cases in which registration of registered judgments may be set aside or application to set aside registration may be adjourned	C125
20.	Effect of setting aside registration of registered judgments	C127

PART 5

ENFORCEMENT IN MAINLAND OF HONG KONG JUDGMENTS

21.	Jurisdiction to issue certified copies of Hong Kong judgments and certificate for Hong Kong judgments.....	C127
-----	---	------

PART 6

MISCELLANEOUS

22.	Restrictions on proceedings.....	C129
23.	Rules of court	C131
24.	Power to amend Schedule 1	C133

MAINLAND JUDGMENTS (RECIPROCAL
ENFORCEMENT) BILL

C107

Clause	Page
25. Publication of list of recognized Basic People's Courts	C133
26. Consequential amendments	C133
Schedule 1 Designated courts	C133
Schedule 2 Consequential amendments	C133

A BILL

To

Make provisions for the enforcement in Hong Kong of judgments in civil or commercial matters that are given in the Mainland which afford reciprocal treatment to judgments given in Hong Kong; for facilitating the enforcement in the Mainland of judgments in civil or commercial matters that are given in Hong Kong; and for matters connected therewith.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Mainland Judgments (Reciprocal Enforcement) Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—
“choice of Hong Kong court agreement” (選用香港法院協議) has the meaning assigned to it by section 3(1);

“choice of Mainland court agreement” (選用內地法院協議) has the meaning assigned to it by section 3(2);

“designated court” (指定法院) means a court in the Mainland which is specified in Schedule 1;

“Hong Kong judgment” (香港判決) includes any judgment, order and allocatur in civil or commercial matters that are given by a court in Hong Kong;

- “judgment creditor” (判定債權人) means the person in whose favour a Mainland judgment was given, and includes any person in whom the rights under the judgment have become vested by succession or assignment or otherwise;
- “judgment debtor” (判定債務人) means the person against whom a Mainland judgment was given, and includes any person against whom the judgment is enforceable under the law of the Mainland;
- “Mainland” (內地) means any part of China other than Hong Kong, Macau and Taiwan;
- “Mainland judgment” (內地判決) means a judgment, ruling, conciliatory statement or order of payment in civil or commercial matters that is given by a designated court;
- “original court” (原審法院), in relation to any Mainland judgment, means the designated court by which that judgment was given;
- “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 provided from time to time for the purposes of this definition to the Government by the Supreme People’s Court;
- “registered judgment” (已登記判決) means a Mainland judgment registered under section 5(2);
- “specified contract” (指明合約) means a contract other than—
- (a) an employment contract; and
 - (b) a contract to which a natural person acting for personal consumption, family or other non-commercial purposes is a party.

(2) Where an expression of the law of the Mainland which refers to any court, court document or court procedure is used in the Chinese language text of this Ordinance, the expression shall be construed having regard to the meaning of the expression under the law of the Mainland, and an analogous expression used in the English language text of this Ordinance shall be construed accordingly.

3. Meaning of “choice of Hong Kong court agreement” and “choice of Mainland court agreement”

(1) In this Ordinance, subject to subsections (3) and (4), “choice of Hong Kong court agreement” (選用香港法院協議) means an agreement concluded by the parties to a specified contract and designating a court in Hong Kong to determine a dispute which has arisen or may arise in connection with the specified contract to the exclusion of courts of other jurisdictions.

(2) In this Ordinance, subject to subsections (3) and (4), “choice of Mainland court agreement” (選用內地法院協議) means an agreement concluded by the parties to a specified contract and designating a court in the Mainland to determine a dispute which has arisen or may arise in connection with the specified contract to the exclusion of courts of other jurisdictions.

(3) Subsections (1) and (2) do not apply to an agreement unless it is concluded or evidenced—

- (a) in writing;
- (b) by any electronic means (including an electronic data message, a telegram, a telex, a facsimile, an electronic data interchange or an electronic mail) by which the agreement is capable of being displayed in visible form and information is accessible so as to be usable for subsequent reference; or
- (c) by any combination of the means described in paragraphs (a) and (b).

(4) Subsections (1) and (2) apply to an agreement whether it is concluded or evidenced in one document or several documents.

4. Severability of choice of Hong Kong court agreement and choice of Mainland court agreement

Unless otherwise provided in the specified contract between the parties, a choice of Hong Kong court agreement or a choice of Mainland court agreement that forms part of the contract shall be regarded for the purposes of this Ordinance as an agreement independent of the other terms of the contract and the validity of the agreement shall not be affected by any modification, discharge, termination or nullification of the contract.

PART 2

APPLICATION FOR REGISTRATION IN HONG KONG OF MAINLAND JUDGMENTS

5. Application for registration of Mainland judgments

(1) A judgment creditor under a Mainland judgment may apply to the Court of First Instance within the time limit specified in section 7 to have the judgment registered in the Court of First Instance.

(2) On an application made under subsection (1), the Court of First Instance shall order the Mainland judgment to be registered in accordance

with this Ordinance if the judgment creditor has proved to the satisfaction of the Court of First Instance that the following requirements are satisfied—

- (a) the judgment is given by a designated court on or after the date of the commencement of this Ordinance;
- (b) the judgment is given pursuant to a choice of Mainland court agreement made on or after the date of the commencement of this Ordinance;
- (c) the judgment is final and conclusive as between the parties to the judgment;
- (d) the judgment is enforceable in the Mainland; and
- (e) the judgment orders the payment of a sum of money (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).

6. Finality of Mainland judgments

(1) For the purposes of section 5(2)(c), a Mainland judgment is final and conclusive as between the parties to the judgment if—

- (a) it is a judgment given by the Supreme People's Court;
- (b) it is a judgment of the first instance given by a Higher People's Court, an Intermediate People's Court or a recognized Basic People's Court and—
 - (i) no appeal is allowed from the judgment according to the law of the Mainland; or
 - (ii) 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;
- (c) it is a judgment of the second instance given by a designated court other than a recognized Basic People's Court; or
- (d) it is a judgment given in a retrial by a people's court of a level higher than the original court unless the original court is the Supreme People's Court.

(2) For the purposes of section 5(2)(d), a Mainland judgment is deemed, until the contrary is proved, to be enforceable in the Mainland if a certificate is issued by the original court certifying that the judgment is final and enforceable in the Mainland.

7. Time limit for application for registration of Mainland judgments

(1) The time limit for making an application for registration of a Mainland judgment under section 5(1) shall be—

- (a) if one or more of the parties to the judgment are natural persons, one year; or
- (b) in any other case, 6 months.

(2) The time limit specified under subsection (1) shall be calculated from the last day of the period for performance of the Mainland judgment as specified in the judgment.

8. Application fee

An application for registration of a Mainland judgment under section 5(1) shall be accompanied by such fee payable in respect of the application as prescribed by the rules of court made under section 23(1).

9. Cases in which only some provisions of Mainland judgments are registrable

If, on an application for registration of a Mainland judgment, it appears to the Court of First Instance that the judgment is in respect of different matters and that some, but not all, of the provisions of the judgment would, if contained in separate Mainland judgments that are the subjects of applications for registration under section 5(1), satisfy the requirements specified in section 5(2)(a) to (e), the judgment, when registered, shall only be registered in respect of those provisions but not in respect of any other provisions contained in the judgment.

10. Mainland judgments partly satisfied

If it has been proved that, at the date of an application for registration of a Mainland judgment, the judgment has been partly satisfied, the judgment, when registered, shall only be registered in respect of the balance remaining payable at that date.

11. Mainland judgments expressed in currency other than Hong Kong currency

Where the sum payable under a Mainland judgment is expressed in a currency other than Hong Kong currency, the judgment, when registered, shall be registered as if it were a judgment for such sum in Hong Kong currency as, on the basis of the rate of exchange prevailing at the date of registration, is equivalent to the sum so payable.

12. Interest, costs, etc., to be included in registration of Mainland judgments

In addition to the sum of money payable under a Mainland judgment, the judgment, when registered, shall be registered for—

- (a) any interest which by the law of the Mainland shall become due under the judgment up to the time of registration and any costs duly certified by the original court for the judgment; and
- (b) any reasonable costs of and incidental to registration of the judgment, including the costs of obtaining a copy of the judgment duly sealed by the original court.

13. Cases in which Mainland judgments are required to be performed in stages

(1) If the performance of a Mainland judgment is required to be in stages, a judgment creditor under the judgment may also apply to the Court of First Instance under section 5(1) to have any part of the judgment registered in the Court of First Instance.

(2) In the case of an application for registration of any part of a Mainland judgment under section 5(1)—

- (a) section 5(2)(a) to (e) shall be regarded as also including the requirement that the sum of money ordered to be paid under that part of the judgment is due, and for the avoidance of doubt, references to the requirements specified in section 5(2)(a) to (e) in this Ordinance (including the reference appearing in section 18(1)(a) in relation to that part of the judgment as registered) shall be construed accordingly;
- (b) unless the context otherwise requires, a reference to a Mainland judgment (however described) in this Ordinance shall be construed as a reference to that part of the Mainland judgment; and
- (c) the other provisions of this Ordinance shall, subject to all necessary modifications, be construed and have application accordingly.

PART 3

EFFECT OF REGISTRATION

14. Effect of registration

(1) A registered judgment shall, for the purpose of execution, be of the same force and effect as if it had been a judgment originally given in the Court of First Instance and entered on the day of registration.

(2) Without prejudice to the generality of subsection (1), upon the registration of a Mainland judgment under section 5(2)—

- (a) proceedings may be taken on the judgment;
- (b) the sum for which the judgment is registered shall carry interest; and
- (c) the Court of First Instance shall have the same control over the execution of the judgment,

as if the judgment had been a judgment originally given in the Court of First Instance and entered on the day of registration.

15. Registered judgments not to be enforced under certain circumstances

No action shall be taken to enforce a registered judgment—

- (a) during the period specified under section 17(1) as that within which an application to set aside the registration of the judgment may be made under Part 4 or that period as extended under section 17(2); or
- (b) where such an application is made during the period specified in paragraph (a), until after the application has been finally disposed of.

16. Recognition of Mainland judgments

(1) Any Mainland judgment which would satisfy the requirements specified in section 5(2)(a) to (e) in an application for registration of the judgment under section 5(1) shall, whether or not the judgment has been registered, be recognized in any court in Hong Kong as conclusive between the parties to the judgment in any proceedings founded on the same cause of action and may be relied on by way of defence or counterclaim in any such proceedings.

(2) This section does not apply to a Mainland judgment if—

- (a) where the judgment has been registered, the registration of the judgment has been set aside on any ground under section 18 or 19 other than that the judgment has been wholly satisfied; or
- (b) where the judgment has not been registered, it is shown that if it had been registered, the registration of the judgment would have been set aside on an application for that purpose on any ground under section 18 or 19 other than that the judgment has been wholly satisfied.

(3) Nothing in this section shall prevent any court in Hong Kong from recognizing a Mainland judgment as conclusive of any matter of law or fact decided in the judgment if that judgment would be recognized as conclusive under the common law before the commencement of this Ordinance.

PART 4

SETTING ASIDE OF REGISTRATION OF REGISTERED JUDGMENTS

17. Time limit for setting aside registration of registered judgments

(1) When making an order under section 5(2) to register a Mainland judgment, the Court of First Instance may specify the period within which an application may be made to set aside the registration of the registered judgment under section 18 or 19.

(2) The Court of First Instance may extend the period (either as originally fixed or as subsequently extended) within which an application under subsection (1) may be made.

18. Cases in which registration of registered judgments shall be set aside

(1) On an application in that behalf made by any party against whom a registered judgment may be enforced, 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 that—

- (a) the judgment is not a Mainland judgment which satisfies the requirements specified in section 5(2)(a) to (e);
- (b) the judgment has been registered in contravention of this Ordinance;
- (c) the choice of Mainland court agreement pursuant to which the judgment was given is invalid under the law of the Mainland

unless the original court has determined that the agreement is valid;

- (d) the judgment has been wholly satisfied;
- (e) the courts in Hong Kong have exclusive jurisdiction over the case according to the law of Hong Kong;
- (f) the judgment was given in the absence of the judgment debtor who according to the law of the Mainland—
 - (i) was not summoned to the original court; or
 - (ii) was so summoned but was not given sufficient time to defend his case;
- (g) the judgment was obtained by fraud;
- (h) a judgment on the same cause of action between the parties to the judgment has been given by a court in Hong Kong;
- (i) a judgment on the same cause of action between the parties to the judgment has been given by a court in a place outside Hong Kong or an arbitral award has been made by an arbitration body, and the judgment or award has already been recognized in or enforced by the courts in Hong Kong;
- (j) the enforcement of the judgment is contrary to public policy; or
- (k) the judgment has been reversed or otherwise set aside pursuant to an appeal or a retrial under the law of the Mainland.

(2) Subsection (1)(f) does not apply where the judgment debtor was summoned to the original court by service by public announcement according to the law of the Mainland.

19. Cases in which registration of registered judgments may be set aside or application to set aside registration may be adjourned

On an application in that behalf made by any party against whom a registered judgment may be enforced, if the party has proved to the satisfaction of the Court of First Instance that an appeal against the judgment is pending or the case on which the judgment was based is ordered to be retried by a competent designated court, the Court of First Instance may, on such terms as it may think just—

- (a) set aside the registration; or
- (b) adjourn the application until after the expiration of such period as it appears to the Court of First Instance to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal or retrial in respect of the judgment disposed of by a competent designated court.

20. Effect of setting aside registration of registered judgments

(1) Subject to subsections (2) and (3), where the registration of a registered judgment has been set aside under section 18, the judgment creditor shall not make a further application to register the judgment under section 5(1).

- (2) Where the registration of a registered judgment has been set aside—
- (a) under section 18(1)(a) solely for the reason that the judgment was not at the date of the application for registration enforceable under the law of the Mainland; or
 - (b) under section 19,

the setting aside of the registration shall not prejudice a further application to register the judgment if and when the judgment becomes enforceable in the Mainland, or when the appeal or retrial in respect of the judgment has been disposed of, as the case may be.

(3) Where the registration of a registered judgment has been set aside under section 18(1)(b) solely for the reason that the judgment, notwithstanding that it had at the date of the application for registration been partly satisfied, was registered for the whole sum payable under the judgment, the Court of First Instance shall, on the application of the judgment creditor, order the judgment to be registered for the balance remaining payable at that date, and the judgment shall, upon being so registered, be regarded for the purposes of this Ordinance as a registered judgment.

PART 5

ENFORCEMENT IN MAINLAND OF HONG KONG JUDGMENTS

21. Jurisdiction to issue certified copies of Hong Kong judgments and certificate for Hong Kong judgments

(1) Where 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) under a Hong Kong judgment given by the Court of Final Appeal or the High Court pursuant to a choice of Hong Kong court agreement, and the judgment creditor is desirous of enforcing the judgment in the Mainland, 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.

(2) Where 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) under a Hong Kong judgment given by the District Court pursuant to a choice of Hong Kong court agreement, and the judgment creditor is desirous of enforcing the judgment in the Mainland, 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.

(3) Upon the issue of a certified copy of the judgment under subsection (1) or (2), the High Court or the District Court, as the case may be, shall also issue a certificate—

(a) certifying that the judgment can be enforced by execution in Hong Kong; and

(b) containing such particulars and having annexed to it such documents, as may be prescribed by the rules of court made under section 23(1) or (2), as the case may be.

(4) Where execution of a Hong Kong judgment is stayed for any period pending an appeal or for any other reason, an application shall not be made under this section with respect to the judgment until the expiration of that period.

(5) In this section, “judgment creditor” (判定債權人) means the person in whose favour a Hong Kong judgment was given, and includes any person in whom the rights under the judgment have become vested by succession or assignment or otherwise.

PART 6

MISCELLANEOUS

22. Restrictions on proceedings

(1) No proceedings may be brought by a party on the same cause of action in respect of which a Mainland judgment has been given if—

(a) an application for registration of the judgment under section 5(1) is pending; or

(b) the judgment is registered under section 5(2).

(2) No proceedings for the recovery of a sum payable under a Mainland judgment which would satisfy the requirements specified in section 5(2)(a) to (e) in an application for registration of the judgment under section 5(1), other than proceedings by way of registration of the judgment, shall be entertained in any court in Hong Kong.

23. Rules of court

(1) The power to make rules of court under section 54 of the High Court Ordinance (Cap. 4) shall include power to make rules for all or any of the following purposes—

- (a) for making provisions with respect to the giving of security for costs by persons applying for registration of Mainland judgments;
- (b) for making provisions with respect to restraining the disposal or transfer of assets of the judgment debtors;
- (c) for prescribing the matters to be proved on an application for registration of a Mainland judgment and for regulating the mode of proving those matters;
- (d) for providing information to courts in the Mainland on the status of enforcement in Hong Kong of a registered judgment and a Hong Kong judgment;
- (e) for providing for the service on the judgment debtor of notice of the registration of a Mainland judgment;
- (f) for prescribing the method by which any question arising under any provisions of this Ordinance as to whether a Mainland judgment is enforceable in the Mainland, or what interest is due under a Mainland judgment under the law of the Mainland, is to be determined;
- (g) for making provisions with respect to the issue of certified copies of and certificates for Hong Kong judgments given by the Court of Final Appeal and the High Court under section 21(1) together with all related documents;
- (h) for prescribing any matter which under any provisions of this Ordinance is to be prescribed by rules of court made under this subsection; and
- (i) generally providing for the better carrying out of the purposes of this Ordinance.

(2) The power to make rules of court under section 72 of the District Court Ordinance (Cap. 336) shall include the power to make rules for all or any of the following purposes—

- (a) for providing information to courts in the Mainland on the status of enforcement in Hong Kong of a registered judgment and a Hong Kong judgment;
- (b) for making provisions with respect to the issue of certified copies of and certificates for Hong Kong judgments given by the District Court under section 21(2) together with all related documents; and

- (c) for prescribing any fees which under any provisions of this Ordinance is to be prescribed by the rules of court made under this subsection.

24. Power to amend Schedule 1

The Chief Executive in Council may, by order published in the Gazette, amend Schedule 1.

25. Publication of list of recognized Basic People's Courts

(1) The Secretary for Justice shall from time to time publish in the Gazette a list of the recognized Basic People's Courts.

(2) A list published under subsection (1) is not subsidiary legislation.

26. Consequential amendments

The enactments specified in Schedule 2 are amended as set out in that Schedule.

SCHEDULE 1

[ss. 2 & 24]

DESIGNATED COURTS

1. The Supreme People's Court
2. A Higher People's Court
3. An Intermediate People's Court
4. A recognized Basic People's Court

SCHEDULE 2

[s. 26]

CONSEQUENTIAL AMENDMENTS

The Rules of the High Court

1. Order heading amended

The heading of Order 71 of the Rules of the High Court (Cap. 4 sub. leg. A) is amended by adding "FOREIGN" before "JUDGMENTS".

2. Orders added

The following are added immediately after Order 71—

“ORDER 71A

RECIPROCAL ENFORCEMENT OF MAINLAND JUDGMENTS

1. Interpretation (O. 71A, r. 1)

In this Order—

“choice of Mainland court agreement” (選用內地法院協議), “judgment creditor” (判定債權人), “judgment debtor” (判定債務人), “Mainland” (內地), “Mainland judgment” (內地判決), “original court” (原審法院) and “registered judgment” (已登記判決) have the meanings assigned to them by section 2(1) of the Ordinance;

“identity card” (身分證) means an identity card within the meaning of the Registration of Persons Ordinance (Cap. 177);

“the Ordinance” (《條例》) means the Mainland Judgments (Reciprocal Enforcement) Ordinance (of 2007).

2. Application for registration (O. 71A, r. 2)

(1) An application under section 5(1) of the Ordinance to have a Mainland judgment registered in the Court may be made ex parte, but the Court may direct a summons to be issued.

(2) If the Court directs a summons to be issued, the summons shall be an originating summons.

(3) An originating summons under this rule shall be in Form No. 10 in Appendix A.

3. Evidence in support of application for registration of Mainland judgments (O. 71A, r. 3)

(1) An application for registration of a Mainland judgment shall be supported by an affidavit—

(a) exhibiting—

(i) a copy of the Mainland judgment duly sealed by the original court;

(ii) the original or a verified or certified or otherwise duly authenticated copy of the choice of Mainland court agreement pursuant to which the judgment was given;

- (iii) a certificate issued by the original court certifying that the judgment is final and enforceable in the Mainland; and
 - (iv) the documents concerning the judgment creditor as referred to in paragraph (2);
 - (b) stating the name, trade or business and the usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively, so far as known to the deponent;
 - (c) stating to the best of the information or belief of the deponent—
 - (i) that at the date of the application, the judgment is enforceable in the Mainland;
 - (ii) that the judgment creditor is entitled to enforce the judgment;
 - (iii) whether any action has been taken to enforce the judgment in the Mainland and, if so, the details of such enforcement;
 - (iv) as the case may require, either that at the date of the application the judgment has not been satisfied or the amount in respect of which it remains unsatisfied at that date; and
 - (v) if the judgment were registered, the registration would not be, or be liable to be, set aside under section 18 or 19 of the Ordinance;
 - (d) specifying the amount of the interest, if any, which by the law of the Mainland has become due under the judgment up to the time of registration together with the costs duly certified by the original court for the judgment.
- (2) For the purposes of paragraph (1)(a), the documents concerning the judgment creditor means—
- (a) if the judgment creditor is a natural person, his identity card or a verified or certified or otherwise duly authenticated copy of the identity card;
 - (b) if the judgment creditor is a natural person but he is not a holder of an identity card, a verified or certified or otherwise duly authenticated copy of his identification document;
 - (c) 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;

- (d) if the judgment creditor is a body of persons incorporated, formed or established under the laws of any other 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.

(3) Where a Mainland judgment sought to be registered is in respect of different matters, and that some, but not all, of the provisions of the judgment would, if contained in separate Mainland judgments that are the subjects of applications for registration under section 5(1) of the Ordinance, satisfy the requirements specified in section 5(2)(a) to (e) of the Ordinance, the affidavit shall state the provisions in respect of which it is sought to register the judgment.

(4) The affidavit shall be accompanied by any evidence relevant to the enforceability of the Mainland judgment, and of the law of the Mainland under which any interest has become due under the judgment.

4. Security for costs (O. 71A, r. 4)

The Court may order the judgment creditor to give security for the costs of the application for registration of a Mainland judgment and of any proceedings which may be brought to set aside the registration.

5. Order for registration (O. 71A, r. 5)

(1) An order for registration of a Mainland judgment shall be drawn up by or on behalf of the judgment creditor, and the order so drawn up shall—

- (a) state the period within which an application may be made to set aside the registration; and
(b) contain a notification that execution on the judgment will not be issued until after the expiration of that period.

(2) Except where the order is made on summons, the order so drawn up is not required to be served on the judgment debtor.

6. Register of Mainland judgments (O. 71A, r. 6)

(1) The Registrar shall keep in the Registry a register of the Mainland judgments ordered to be registered under the Ordinance.

(2) There shall be included in such register particulars of any execution issued on a Mainland judgment.

7. Notice of registration (O. 71A, r. 7)

(1) The judgment creditor shall serve a notice of registration of a Mainland judgment on the judgment debtor by delivering it to him personally or by sending it to him at his usual or last known place of abode or business or in such other manner as the Court may direct.

(2) Service of such a notice out of the jurisdiction is permissible without leave, and Order 11, rules 5A and 8A, shall apply in relation to such a notice as they apply in relation to a writ.

(3) The notice of registration shall set out—

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

8. Application to set aside registration

(O. 71A, r. 8)

(1) An application to set aside the registration of a registered judgment shall be made by summons supported by affidavit.

(2) The Court hearing such application may order any issue between the judgment creditor and the judgment debtor to be tried in any manner in which an issue in an action may be ordered to be tried.

(3) The Court may, either of its own motion or on an application made by the judgment creditor, and if having regard to all the circumstances of the case it thinks it just to do so, impose such terms (whether as to giving security or otherwise) as it thinks fit as a condition of the further conduct of an application under this rule.

9. Issue of execution (O. 71A, r. 9)

Any party wishing to issue execution on a registered judgment shall produce to the Registrar an affidavit of service of the notice of registration of the judgment and any order made by the Court in relation to the judgment.

**10. Application for registration of part of
Mainland judgments (O. 71A, r. 10)**

In the case of an application for registration of any part of a Mainland judgment under section 5(1) of the Ordinance—

- (a) rule 2 applies to such an application;
- (b) unless the context otherwise requires, a reference to a Mainland judgment (however described) in this Order shall be construed as a reference to that part of the Mainland judgment; and
- (c) the other provisions of this Order shall, subject to all necessary modifications, be construed and have application accordingly.

**11. Evidence in support of application for
registration of part of Mainland
judgments (O. 71A, r. 11)**

(1) In the case of an application for registration of any part of a Mainland judgment under section 5(1) of the Ordinance, in addition to the information specified in rule 3(1), the affidavit submitted in support of the application shall also state to the best of the information or belief of the deponent that the sum of money ordered to be paid under that part of the judgment is due.

(2) Notwithstanding rule 3, where an application for registration of any part of a Mainland judgment under section 5(1) of the Ordinance is preceded by any application for registration of a different part of the same judgment under that section, the subsequent application for registration shall be supported by—

- (a) a copy of any affidavit submitted in support of the previous applications for registration of any part of the same judgment under that section; and
- (b) a further affidavit complying with the requirements specified in rule 3 (as read subject to paragraph (1)) exhibiting the documents and stating or specifying the information required in relation to this subsequent application unless the documents and information have been exhibited, stated or specified in the copy of the affidavit mentioned in subparagraph (a).

ORDER 71B

CERTIFIED COPIES OF JUDGMENTS GIVEN BY COURT OF FINAL
APPEAL AND HIGH COURT

1. Interpretation (O. 71B, r. 1)

In this Order—

- “choice of Hong Kong court agreement” (選用香港法院協議) has the meaning assigned to it by section 2(1) of the Ordinance;
- “judgment” (判決) includes any judgment, order and allocatur in civil or commercial matters;
- “Mainland” (內地) has the meaning assigned to it by section 2(1) of the Ordinance;
- “the Ordinance” (《條例》) means the Mainland Judgments (Reciprocal Enforcement) Ordinance (of 2007).

2. Certified copies of judgments (O. 71B, r. 2)

(1) An application under section 21 of the Ordinance for a certified copy of a judgment given by the Court of Final Appeal or the High Court shall be made *ex parte* to the Registrar on affidavit.

(2) The affidavit shall—

- (a) exhibit the original or a verified or certified or otherwise duly authenticated copy of the choice of Hong Kong court agreement pursuant to which the judgment was given;
- (b) give particulars of the proceedings in which the judgment was obtained;
- (c) state the amount in respect of which the judgment remains unsatisfied at the date of the application;
- (d) state whether the defendant did or did not object to the jurisdiction and, if he objected, on what grounds;
- (e) state whether any action has been taken to enforce the judgment in Hong Kong and, if so, the details of such enforcement;
- (f) show that the judgment is not subject to any stay of execution;
- (g) state that the time for appealing has expired or, as the case may be, the date on which it will expire and in either case whether any notice of appeal against the judgment has been entered; and
- (h) state the rate at which the judgment carries interest.

(3) The certified copy of the judgment shall be an office copy sealed with the seal of the High Court and indorsed with a certificate signed by the Registrar certifying that the copy is a true copy of a judgment obtained in the Court of Final Appeal or the High Court, as the case may be, and that it is issued in accordance with section 21 of the Ordinance.

(4) The certificate issued by the High Court under section 21(3) of the Ordinance shall have annexed to it a copy of the writ, originating summons or other process by which the proceedings were begun and a copy of the reasoned judgment (if any), and state—

- (a) what pleadings, if any, were served;
- (b) the manner in which the writ or such summons or other process was served on the defendant or that the defendant acknowledged service of the writ or summons or process;
- (c) the amount in respect of which the judgment remains unsatisfied at the date of the application as stated by the deponent in the affidavit by which the application is made;
- (d) what objections, if any, were made to the jurisdiction;
- (e) the date from which the judgment takes effect;
- (f) whether any action has been taken to enforce the judgment in Hong Kong and, if so, the details of such enforcement;
- (g) that the time for appealing has expired or, as the case may be, the date on which it will expire;
- (h) whether any notice of appeal against the judgment has been entered;
- (i) the rate at which the judgment carries interest; and
- (j) 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.

(5) The certificate shall be signed by the Registrar and sealed with the seal of the High Court.”.

Foreign Judgments (Restrictions on Recognition and Enforcement) Ordinance

3. Section added

The Foreign Judgments (Restrictions on Recognition and Enforcement) Ordinance (Cap. 46) is amended by adding—

“2A. Application

(1) This Ordinance does not apply to a Mainland judgment, or any part of a Mainland judgment, which would satisfy the requirements

specified in section 5(2)(a) to (e) of the Mainland Judgments (Reciprocal Enforcement) Ordinance (of 2007) in an application for registration of the judgment or that part of the judgment (as the case may be) under section 5(1) of that Ordinance.

(2) In this section, “Mainland judgment” (內地判決) has the meaning assigned to it by section 2(1) of the Mainland Judgments (Reciprocal Enforcement) Ordinance (of 2007).”.

The Rules of the District Court

4. Judgments and orders

Order 42 of the Rules of the District Court (Cap. 336 sub. leg. H) is amended by adding—

“6. Certified copies of judgments (O. 42, r. 6)

(1) An application under section 21 of the Mainland Judgments (Reciprocal Enforcement) Ordinance (of 2007) (in this rule referred to as “the Ordinance”) for a certified copy of a judgment given by in the Court shall be made *ex parte* to the Registrar on affidavit.

(2) The affidavit shall—

- (a) exhibit the original or a verified or certified or otherwise duly authenticated copy of the choice of Hong Kong court agreement pursuant to which the judgment was given;
- (b) give particulars of the proceedings in which the judgment was obtained;
- (c) state the amount in respect of which the judgment remains unsatisfied at the date of the application;
- (d) state whether the defendant did or did not object to the jurisdiction and, if he objected, on what grounds;
- (e) state whether any action has been taken to enforce the judgment in Hong Kong and, if so, the details of such enforcement;
- (f) show that the judgment is not subject to any stay of execution;
- (g) state that the time for appealing has expired or, as the case may be, the date on which it will expire and in either case whether any notice of appeal against the judgment has been entered; and
- (h) state the rate at which the judgment carries interest.

(3) The certified copy of the judgment shall be an office copy sealed with the seal of the Court and indorsed with a certificate signed by the Registrar certifying that the copy is a true copy of a judgment obtained in the Court and that it is issued in accordance with section 21 of the Ordinance.

(4) The certificate issued by the Court under section 21(3) of the Ordinance shall have annexed to it a copy of the writ, originating summons or other process by which the proceedings were begun and a copy of the reasoned judgment (if any), and state—

- (a) what pleadings, if any, were served;
- (b) the manner in which the writ or such summons or other process was served on the defendant or that the defendant acknowledged service of the writ or summons or process;
- (c) the amount in respect of which the judgment remains unsatisfied at the date of the application as stated by the deponent in the affidavit by which the application is made;
- (d) what objections, if any, were made to the jurisdiction;
- (e) the date from which the judgment takes effect;
- (f) whether any action has been taken to enforce the judgment in Hong Kong and, if so, the details of such enforcement;
- (g) that the time for appealing has expired or, as the case may be, the date on which it will expire;
- (h) whether any notice of appeal against the judgment has been entered;
- (i) the rate at which the judgment carries interest; and
- (j) 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.

(5) The certificate shall be signed by the Registrar and sealed with the seal of the Court.

(6) In this rule—

“choice of Hong Kong court agreement” (選用香港法院協議) has the meaning assigned to it by section 2(1) of the Ordinance;

“judgment” (判決) includes any judgment, order and allocatur in civil or commercial matters;

“Mainland” (內地) has the meaning assigned to it by section 2(1) of the Ordinance.”.

Explanatory Memorandum

The object of this Bill is to make provisions for the enforcement in Hong Kong of judgments in civil or commercial matters that are given in the Mainland and for facilitating the enforcement in the Mainland of judgments in civil or commercial matters that are given in Hong Kong.

2. Part 1 (clauses 1 to 4) contains preliminary provisions. Clause 2 defines certain terms used in the Bill and clause 3 sets out the meaning of “choice of Hong Kong court agreement” and “choice of Mainland court agreement”.

3. Part 2 (clauses 5 to 13) provides for matters relating to an application for registration of Mainland judgments. Clauses 5 and 6 provide that the Court of First Instance shall order the registration of a Mainland judgment if certain matters are proved by the judgment creditor. Clause 7 sets out the time limit for making the application. Clause 8 provides that the application has to be accompanied by a prescribed fee. Clauses 9 to 11 deal with cases where only some provisions of a Mainland judgment are registrable, where the judgment is partly satisfied, and where the judgment is expressed in a currency other than Hong Kong currency. Clause 12 provides that the Mainland judgment shall, in addition to the sum payable under the judgment, be registered for any interest which shall be due under the judgment, any costs duly certified by the original court and any reasonable costs of and incidental to registration. Clause 13 deals with cases in which a Mainland judgment is required to be performed in stages.

4. Part 3 (clauses 14 to 16) sets out the effect of registration. Clause 14 provides that a registered judgment shall have the same force and effect as if the judgment had been a judgment originally given in the Court of First Instance. Clause 15 prohibits any action to be taken to enforce a registered judgment during certain period. Clause 16 provides that certain Mainland judgments which would satisfy the requirements specified in clause 5(2) shall be recognized in the courts in Hong Kong but further provides for exceptions from this clause.

5. Part 4 (clauses 17 to 20) provides for the setting aside of registration of registered judgments. Clause 17 empowers the Court of First Instance to specify and extend the time limit for setting aside the registration of a registered judgment. Clause 18 provides for cases in which the Court of First Instance shall set aside the registration of a registered judgment whereas clause 19 provides for cases in which the Court of First Instance may order that registration be set aside or that the application for setting aside of the registration be adjourned. Clause 20 provides for the effect of the setting aside of the registration of a registered judgment.

6. Part 5 (clause 21) deals with the enforcement of judgments given in Hong Kong. Clause 21 provides for the jurisdiction of the High Court to issue certified copies of judgments given by the Court of Final Appeal or the High Court and further for the jurisdiction of the District Court to issue certified copies of judgments given by the District Court .

7. Part 6 (clauses 22 to 26) contains miscellaneous provisions. Clause 22 sets out the restrictions on bringing certain proceedings in the courts in Hong Kong. Clause 23 extends the rule-making power under section 54 of the High Court Ordinance (Cap. 4) and section 72 of the District Court Ordinance (Cap. 336) for the purposes of the Bill. Clause 24 empowers the Chief Executive in Council to amend the list of designated courts specified in Schedule 1. Clause 25 requires the Secretary for Justice to publish the list of the recognized Basic People's Courts which is provided from time to time by the Supreme People's Court. Clause 26 and Schedule 2 provide for consequential amendments to the Rules of the High Court (Cap. 4 sub. leg. A), the Foreign Judgments (Restrictions on Recognition and Enforcement) Ordinance (Cap. 46) and the Rules of the District Court (Cap. 336 sub. leg. H).